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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 0093 (VEC)

5 SHELDON SILVER,

6 Defendant.

7 -----x

8 November 18, 2015

9 9:27 a.m.

10 Before:

11 HON. VALERIE E. CAPRONI,

12 District Judge
and a Jury

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the
Southern District of New York

15 BY: CARRIE H. COHEN,

16 ANDREW D. GOLDSTEIN,

HOWARD S. MASTER,

17 JAMES M. McDONALD,

Assistant United States Attorneys

18 STROOCK & STROOCK & LAVAN LP

Attorneys for Defendant

19 BY: JOEL COHEN

20 - and -

MOLOLAMKEN, LLP

21 BY: STEVEN F. MOLO

JUSTIN SHUR

22 JUSTIN ELLIS

ROBERT KRY

23 TUONGVY LE

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1 (Trial resumed; jury not present)

2 THE COURT: I understand that despite me asking you to
3 let me know at 9:15 that things weren't worked out I didn't
4 hear about it until just now. So, with that introduction,
5 where are you?

6 MS. COHEN: Your Honor, I talked with Mr. Shur about
7 some leading questions to ask Jordan Levy related to the PACB
8 matter. He is reviewing them. He has told me at first blush
9 he does not agree but perhaps we can deal with it at morning
10 break since Jordan Levy would be our third witness today.

11 THE COURT: Okay.

12 MR. SHUR: Judge, I'm happy to address it now or at a
13 break.

14 THE COURT: The jury is here. My goal, when I ask you
15 to do something so that we can deal with it at 9:15 -- don't
16 look like you are so innocent, you are part of this. The
17 reason I ask for that is so that we don't keep the jury waiting
18 and make use of the early time to resolve issues.

19 MR. SHUR: To be clear, Ms. Cohen told me the
20 questions maybe 60 seconds ago.

21 THE COURT: Okay. Bring in the jury.

22 Who is your first witness?

23 MR. GOLDSTEIN: Mr. Whyland's counsel was able to come
24 so we are going to put Mr. Whyland back on the stand.

25 THE COURT: Oh good.

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1 MS. COHEN: Shall we get the witness on the stand
2 before the jury comes in?

3 THE COURT: They have to line up so go ahead and bring
4 him in.

5 MR. GOLDSTEIN: Your Honor, we did choose to remove
6 the reference to the rape case from the recording.

7 THE COURT: Okay.

8 MS. COHEN: We sent a copy to defense.

9 THE COURT: Okay.

10 (Continued on next page)

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Whyland - redirect

1 (Jury present)

2 THE COURT: Okay. Good morning, everybody.

3 THE JURY: Good morning.

4 THE COURT: Sir, you are still under oath.

5 MICHAEL WHYLAND, resumed.

6 THE COURT: Mr. Goldstein.

7 MR. GOLDSTEIN: Thank you, your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GOLDSTEIN:

10 Q. Good morning, Mr. Whyland.

11 A. Good morning.

12 Q. Do you recall that defense counsel asked you some questions
13 about whether the government provided you with the full
14 recordings from which the excerpts that we reviewed yesterday
15 were drawn?

16 A. Yes, I do.

17 Q. Mr. Whyland, what did the government provide you with in
18 advance of your testimony?

19 A. It provided me with transcripts of particular parts of the
20 recordings, as well as the full recordings.

21 Q. So you were provided with the entire audio files?

22 A. Yes, I was.

23 Q. And were those recordings from the Assembly's own files?

24 A. Yes, they were.

25 Q. Let's go back to what had been marked as Government Exhibit

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Whyland - redirect

1 1 and play a little longer excerpt. In your binder there is an
2 exhibit marked as Government Exhibit 1A which should also be in
3 the jury binders.

4 MR. GOLDSTEIN: Your Honor, the government offers 1A
5 as an audio file for admission and 1A-T as an aid to the jury.

6 THE COURT: Any objection?

7 MR. MOLO: No objection, your Honor.

8 THE COURT: So 1A is admitted.

9 (Government's Exhibit 1A received in evidence)

10 BY MR. GOLDSTEIN:

11 Q. Mr. Coccaro, can we go ahead and play 1A from the
12 beginning?

13 (Audiofile played)

14 Q. Mr. Whyland, did you know that Weitz & Luxenberg handled
15 asbestos cases?

16 A. Yes.

17 Q. Did Sheldon Silver ever tell you that he worked on asbestos
18 cases at Weitz & Luxenberg?

19 A. Not that I recall specifically, no.

20 Q. Did he ever tell you that he had any asbestos clients?

21 A. Not that I recall.

22 Q. Did he ever tell you that he was paid money for asbestos
23 cases?

24 A. No, not that I recall.

25 Q. You never told the press that Sheldon Silver worked on or

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Whyland - redirect

1 made money from asbestos cases, right?

2 A. No.

3 Q. Why not?

4 A. Because I had no specific knowledge of it.

5 Q. Yesterday defense counsel asked you some questions about
6 whether the statements that you testified about yesterday in
7 the audio -- in the audio clips and in the newspaper articles,
8 whether or not they were out of context or incomplete.

9 Do you remember those questions?

10 A. Yes.

11 Q. Did Sheldon Silver ever tell you that any article about his
12 outside income was incomplete?

13 A. No.

14 Q. Did he ever tell you that any article about his outside
15 income was out of context?

16 A. No.

17 Q. Did he ever tell you that any article about his outside
18 income got it wrong?

19 A. Not that I recall, no.

20 Q. For how many years did you work for Sheldon Silver?

21 A. For four years, approximately.

22 Q. Through all four of those years, among all of the various
23 press stories that were written about Sheldon Silver's outside
24 income, did he ever once ask you to correct the record?

25 A. Not that I recall, no. No.

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Whyland - recross

1 Q. Defense counsel also asked if Sheldon Silver ever
2 instructed you to lie to the press.

3 Do you recall that?

4 A. Yes.

5 Q. Before you spoke with a reporter about a question related
6 to Sheldon Silver's outside income, who did you speak with?

7 A. The Speaker.

8 Q. So what you told the press is what Sheldon Silver told you,
9 right?

10 A. Yes.

11 Q. Did you have any independent knowledge of the nature or the
12 sources of Sheldon Silver's outside income?

13 A. Independent knowledge? No.

14 Q. So you only knew what Sheldon Silver told you, right?

15 A. Yes.

16 Q. In fact, until this investigation what knowledge, if any,
17 did you have that Sheldon Silver was making hundreds of
18 thousands of dollars from a real estate law firm?

19 A. I had no knowledge of that.

20 MR. GOLDSTEIN: Nothing further, your Honor.

21 THE COURT: Any recross?

22 MR. MOLO: Very short.

23 RECROSS EXAMINATION

24 BY MR. MOLO:

25 Q. Mr. Whyland, would you say Mr. Silver had pretty thick

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Whyland - recross

1 skin?

2 A. Yeah, very thick skin.

3 Q. Very thick skin?

4 A. Very.

5 Q. So not only did he not ask you to correct the record
6 regarding his income, he never asked you to correct the record
7 on anything, right?

8 A. Once or twice, but rarely. Very rarely.

9 Q. And you were asked about not having specific knowledge of
10 Mr. Silver's law practice and you knew that he was at
11 Weitz & Luxenberg and they handled asbestos cases, right?

12 A. Right.

13 Q. And you didn't know specifically whether he did or not,
14 right? Correct?

15 A. Not specifically, no.

16 Q. And he didn't tell you that, correct?

17 A. Correct.

18 Q. Can we play the last 20 seconds of that tape again, the
19 last 25 seconds of that tape?

20 THE COURT: Of the excerpt that is 1A?

21 MR. MOLO: Yes.

22 I get to say Mr. Coccaro. Mr. Coccaro, please; the
23 name most mentioned in the record.

24 THE COURT: Yes.

25 MR. COCCARO: I don't object, your Honor.

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Whyland - recross

1 THE COURT: Okay. He will be sending you a bill,
2 Mr. Molo.

3 (Audiofile played)

4 BY MR. MOLO:

5 Q. So, when Mr. Silver gave this interview to the New York
6 Post he was telling them that he had asbestos clients, correct?

7 A. Correct.

8 MR. GOLDSTEIN: Objection.

9 THE COURT: Overruled.

10 A. That is correct.

11 Q. These recordings you got through the archives of the press
12 office, is that right? These were retrieved?

13 A. Yes.

14 Q. I don't think you were actually working for Mr. Silver at
15 the time of any of these, correct?

16 A. Only the last recording, the December 24th.

17 Q. That was at a gaggle?

18 A. Correct.

19 Q. By the way, that was just in an elevator with people
20 following him and --

21 A. Yeah. Yeah.

22 Q. -- microphones?

23 A. Yeah, reporters following him down the hall into an
24 elevator.

25 MR. MOLO: Thank you very much, your Honor.

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Whyland - recross

1 MR. GOLDSTEIN: Your Honor, can we have a brief side
2 bar?

3 THE COURT: Okay.
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Whyland - recross

1 (At side bar)

2 MR. GOLDSTEIN: Your Honor, Mr. Molo asked the witness
3 about whether or not Sheldon Silver asked to correct the
4 record. The defense knows one very specific instance of that
5 which was the subject of motions *in limine* which is when it was
6 reported by the New York Times that Sheldon Silver had opposed
7 this redevelopment in his district near his residence for years
8 and he asked, and through Mr. Whyland, asked to attribute it to
9 the Sheldon E. Silver and blamed Sheldon E. Silver for it.

10 We, through the motions *in limine*, were not planning
11 to put that in but I think Mr. Molo has opened the door to
12 questions about that given his question about the Speaker never
13 asking to correct the record.

14 MR. MOLO: I don't think that that was a question
15 about correcting the record and certainly not correcting the
16 record in the context of the way the question was put in the
17 redirect examination. He asked him whether or not he asked to
18 correct the record in a broad, general sense as well. He asked
19 the question: Did he ever ask you to correct the record on
20 any --

21 THE COURT: That was redirect off of your cross from
22 yesterday.

23 MR. MOLO: Right. And when he asked that question I
24 asked the recross question. I mean, I don't see how that's --
25 and the whole Sheldon -- we have been through that. That was a

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Whyland - recross

1 whole question about an incorrect name. There was a great deal
2 of confusion about that.

3 THE COURT: With all due respect, your client's
4 explanation of that strikes the Court as poppycock. But, be
5 that as it may, I think it is a huge distraction and I'm not
6 going to allow you to.

7 MS. COHEN: I want to correct one thing which is that
8 the question on redirect was limited to correcting a record
9 about outside income. He did not open the door, it was
10 Mr. Molo's question that brought it up.

11 THE COURT: I still think it is a distraction at this
12 stage of the game.
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Cody - direct

1 (In open court)

2 MR. GOLDSTEIN: Your Honor, nothing further.

3 THE COURT: Thank you. You may step down.

4 (Witness steps down)

5 THE COURT: Call your next witness.

6 MS. COHEN: Your Honor, the government calls Paul

7 Cody.

8 MR. GOLDSTEIN: Shall we collect the binders now?

9 THE COURT: Yes.

10 Turn in your binders.

11 PAUL RICHARD CODY,

12 called as a witness by the Government,

13 having been duly sworn, testified as follows:

14 THE DEPUTY CLERK: Please state your full name, and
15 spell your last name, slowly, for the record.

16 THE WITNESS: Paul Richard Cody. C-O-D-Y.

17 THE DEPUTY CLERK: Thank you. Please, be seated.

18 DIRECT EXAMINATION

19 BY MS. COHEN:

20 Q. Mr. Cody, where do you work?

21 A. Counsel Financial.

22 Q. What is Counsel Financial?

23 A. A commercial lender. We provide working capital lines of
24 credit to law firms, primarily contingency fee law firms;
25 plaintiff's firms.

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Cody - direct

1 Q. What position do you hold at Counsel Financial?

2 A. I'm the president.

3 Q. How long have you been the president of Counsel Financial?

4 A. Since 2008.

5 Q. In general, what are your duties and responsibilities as
6 president of Counsel Financial?

7 A. I am -- they're various. Oversee the staff, underwriting,
8 general vision of the company.

9 Q. How did it come about that you were hired as the president
10 of Counsel Financial?

11 A. My prior position I worked with Jordan Levy and Ron
12 Schreiber at venture capital firms called SoftBank Capital --

13 THE COURT: Whoa. Slow, way, way, way, down.

14 A. There was a number of different companies that were
15 involved, they were generally venture capitalists. SoftBank
16 Capital.

17 THE COURT: SoftBank, all one word?

18 A. All one word, SoftBank; Seed Capital Partners, like
19 planting a seed, S-E-E-D Capital; and JoRon J-O-R-O-N
20 Management.

21 Q. I will ask you about each one of those in a minute but, in
22 general, what is SoftBank Capital?

23 A. A company that makes investments in businesses, typically
24 an equity investment in an effort of making a return.

25 Q. What do you mean by equity investment?

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Cody - direct

1 A. Taking ownership position in different businesses.

2 Q. What is JoRon?

3 A. JoRon is a privately held company. It was opportunistic
4 meaning it made investments in multiple types of entities.
5 They were two major partners. The two major partners are the
6 name sake of the company, JoRon is Jordan, J-O is Jordan Levy
7 and Ron is Ron Schreiber.

8 THE COURT: How do you spell Schreiber.

9 THE WITNESS: S-C-H-R-E-I-B-E-R, I believe.

10 Q. What is Seed Capital?

11 A. Seed Capital is a venture capital fund that focused on
12 technology equity investments.

13 Q. And prior to working for JoRon, Seed Capital and SoftBank,
14 what positions did you hold at other companies?

15 A. When I graduated from college I was -- I worked at a large
16 public accounting firm, KPMG, became a CPA there. Spent a
17 little time in insurance as a controller of an insurance
18 company called Nova Casualty and a short stint at a defense
19 contractor.

20 Q. When you said you were a CPA, you were a certified public
21 accountant?

22 A. Correct.

23 Q. When did you earn your certified public -- when did you
24 become a certified public accountant?

25 A. 1995.

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Cody - direct

1 Q. So, what year did you start as president of Counsel
2 Financial?

3 A. It was February of 2008.

4 Q. And how does Counsel Financial get money into the company?
5 How does it find investors?

6 A. Well, there is two ways that we finance our loans. One is
7 we have a lending relationship with a large institutional bank
8 and then second we have what is known as subordinated debt
9 which is individual investors that have -- most of them are
10 friends, family, business associates, former business
11 associates of the ownership or management group of the company,
12 they make investments in Counsel Financial typically in the
13 form of subordinated notes, promissory notes.

14 Q. What do you mean by a promissory note?

15 A. It is an investment that provides them with an interest
16 rate return for putting an investment in the company and
17 they're typically repaid in three-year time periods at varying
18 interest rates.

19 Q. How do investors learn about Counsel Financial?

20 A. One of two ways. A lot of it, I would say a majority of
21 our investors have been through friends, family or associates
22 of owners of the business or management in the business, but
23 other investors have sought us out that have just been
24 interested in the industry that we are in and have cold-called
25 us or contacted us in some form.

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Cody - direct

1 Q. What is an accredited investor?

2 A. It is a qualification that is primarily financially driven.

3 So, the investors have to be accredited to invest in
4 Counsel Financial which means they, for an individual the
5 primary tests are you have to have in excess of a million
6 dollars of net worth or you have to have annual income, as an
7 individual, I believe it is \$200,000 a year in the preceding
8 two years; as a family I believe it is \$300,000 a year.

9 Q. Why does Counsel Financial require its investors to be
10 accredited investors?

11 A. The designation as an accredited investor implies an
12 increased level of sophistication. When you are getting
13 involved in more complex types of transactions and we are not a
14 publicly traded stock so there is a little complexity
15 understanding what our business is and that they have the
16 ability to understand. It is a presumption that they maybe are
17 involved in other types of investments and that they would be
18 capable of, one, understanding this investment; and two, have
19 the financial wherewithal to make it.

20 THE COURT: I'm sorry.

21 By this investment do you mean the risks of the
22 investment? The risks and rewards?

23 THE WITNESS: Yes, understanding. We provide
24 materials to our investors so they can absorb and understand
25 the type of investment that they're making.

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Cody - direct

1 THE COURT: Okay. Are you regulated by anybody?

2 THE WITNESS: No.

3 THE COURT: Okay.

4 BY MS. COHEN:

5 Q. So, Counsel Financial is not regulated by any regulatory
6 body; federal, state, or local?

7 A. No. As a commercial lender we are not -- we have to
8 follow, obviously, certain rules and regulations but we are not
9 specifically regulated like a bank.

10 Q. And what is the rate of interest, in general, on
11 investments in Counsel Financial over the past 10 years?

12 A. It's ranged from 9 percent to as high as maybe 15.

13 THE COURT: A year?

14 THE WITNESS: Per year.

15 THE COURT: Okay.

16 BY MS. COHEN:

17 Q. So that an investor in Counsel Financial receives 9 to 14
18 percent on the money that they invested in Counsel Financial?

19 A. Annually, correct.

20 Q. And how is it determined what rate of interest a particular
21 investor will receive in Counsel Financial?

22 A. Two primary factors; one is the amount of their investment,
23 typically a larger investment can earn a higher percent of
24 interest, and the only other exception is if we are more
25 aggressively seeking funds we have been a growing company

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Cody - direct

1 consistently since I have been there, so as we have been trying
2 to raise funds and support the growth of our portfolio
3 sometimes we will be more aggressive, provide a higher rate of
4 interest to entice people to invest.

5 Q. Was Sheldon Silver an investor in Counsel Financial?

6 A. Yes.

7 Q. How did it come about that Sheldon Silver became an
8 investor?

9 A. When Mr. Silver first invested, I believe it was in the
10 beginning of 2007, at the time I was working with the other
11 entities, JoRon Management and Jordan Levy was the one who
12 introduced him to Counsel Financial, it is my understanding.

13 Q. And can you just explain how does JoRon Management or
14 Jordan Levy relate to Counsel Financial?

15 A. Jordan Levy and Ron Schreiber -- I believe it was Ron was
16 initially an investor in another company that was owned by the
17 management of Counsel Financial, and so they had a friendly
18 relationship over the years. They had made some investments in
19 the business.

20 Q. You say they had a friendly relationship, Jordan Levy and
21 Ron Schreiber?

22 A. Jordan Levy and Ron Schreiber both did. Jordan was an
23 initial investor, and Ron did, but it was probably at the same
24 time Mr. Silver invested.

25 Q. So, both Jordan Levy and Ron Schreiber are investors in

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Cody - direct

1 Counsel Financial?

2 A. Correct.

3 Q. It is your understanding that Jordan Levy introduced
4 Sheldon Silver to invest in Counsel Financial?

5 A. That's correct.

6 Q. Other than Sheldon Silver, what other elected officials
7 have had investments in Counsel Financial?

8 A. I think only one former local politician -- local meaning
9 Buffalo.

10 Q. When the former --

11 THE COURT: I'm sorry. You said local meaning
12 Buffalo?

13 A. Local or headquartered just outside of Buffalo.

14 Q. And when the former local politician from Buffalo invested
15 in Counsel Financial, was that politician, had they been voted
16 out of office?

17 A. Yes. I don't think they were in office.

18 Q. Other than that one individual, do you recall anyone else
19 other than Sheldon Silver who had access and invested with
20 Counsel Financial?

21 A. I do not.

22 Q. You said Sheldon Silver's first investment in Counsel
23 Financial was 2007?

24 A. Correct.

25 Q. How much was Sheldon Silver's first investment in Counsel

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Cody - direct

1 Financial?

2 A. \$25,000.

3 Q. Was there a minimum amount that was required, typically, to
4 invest in Counsel Financial?

5 A. I don't recall. At the time I was not at Counsel Financial
6 at the time. I don't recall a stated minimum, but that would
7 be on the low end. \$25,000 would be on the low end of the
8 range.

9 Q. Did you know Sheldon Silver?

10 A. No. Never met him.

11 Q. You never met him?

12 A. No.

13 Q. What did you know about how Sheldon Silver had money to
14 invest in Counsel Financial?

15 A. I didn't. I wasn't aware of his situation.

16 THE COURT: You need to keep your voice up, please.

17 THE WITNESS: Okay.

18 Q. What paperwork does Counsel Financial require potential
19 investors to complete in order to become an investor?

20 A. Primarily, three documents. There is a non-disclosure
21 initially which is just when we provide materials that they
22 don't disclose the information, there is a subscription
23 agreement and along with the subscription agreement a
24 questionnaire, and then there is a-the promissory note itself.

25 Q. Why do you provide potential investors with a

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Cody - direct

1 non-disclosure agreement?

2 A. Because we are a privately held company so we don't want to
3 share the information that's disclosed about our business.

4 Q. And did Sheldon Silver receive a subscription agreement,
5 investor questionnaire and a non-disclosure agreement for his
6 initial \$25,000 investment in Counsel Financial?

7 A. Yes, he would have.

8 Q. If you can look in your binder, please, at what's been
9 marked Government Exhibit 952 and if you recognize it, what is
10 it?

11 A. I think I am actually missing 952. Oh wait, sorry. It is
12 the very first one. I have it.

13 This is a subscription agreement and the related
14 investor questionnaire.

15 Q. Is it a subscription agreement and investor questionnaire
16 for Sheldon Silver?

17 A. It is.

18 Q. Is this a document maintained in the books and records of
19 Counsel Financial?

20 A. It is.

21 Q. Is it a true and accurate copy of the documents as it
22 exists in the books and records of Counsel Financial?

23 A. It is. Yes.

24 MS. COHEN: Government moves 952 into evidence.

25 MR. SHUR: No objection.

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Cody - direct

1 THE COURT: 952 is received.

2 (Government's Exhibit 952 received in evidence)

3 BY MS. COHEN:

4 Q. Mr. Cody, if you could just explain for the jury what
5 Government Exhibit 952 is?

6 A. The subscription agreement is an agreement that essentially
7 says that the investor understands the investment that they're
8 making, that they have the authority to move forward on the
9 investment, that they have looked at the materials that we have
10 provided, and that they represent that they are accredited.

11 Q. If you look at the first no. 1 -- Mr. Coccaro, if you could
12 zoom in on that, please -- it refers to a note. What is being
13 referred to there?

14 A. That is the promissory note that is the actual document
15 that is signed that represents that the investor has made an
16 investment in the company and what the company's obligations
17 are in terms of repayment.

18 Q. Can you look at the second page of Government Exhibit 952
19 which is the second page of the subscription agreement; whose
20 name and signature appears there?

21 A. Mr. Silver. Sheldon Silver.

22 Q. And Exhibit A to the subscription agreement, which is the
23 third page of Government Exhibit 952, is called the investor
24 questionnaire?

25 A. Correct.

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Cody - direct

1 Q. What is this document?

2 A. This is the document where the investor makes
3 representations about their -- confirming that they are in fact
4 accredited.

5 Q. And looking at no. 1, this is the investor questionnaire
6 for Sheldon Silver?

7 A. Correct.

8 Q. And do you know the address there listed as 180 Maiden
9 Lane; do you know what that address is?

10 A. I believe that's the former office of Weitz & Luxenberg.

11 Q. And what box is no. 2? What boxes did Sheldon Silver check
12 to confirm that he was -- could be deemed an accredited
13 investor?

14 A. He checked three separate boxes, the first being an
15 individual having net worth in excess of \$1 million, the second
16 being an individual having individual income in excess of
17 \$200,000 in the preceding two years or joint -- in this case it
18 would be single so that would be the relevant provision, and
19 then the third being an individual having a net worth of in
20 excess of four times the investment.

21 Q. And here the investment for this investor questionnaire,
22 this initial investment was \$25,000?

23 A. Correct.

24 Q. If you look at the second page of Government Exhibit 952,
25 who signed this document and what is the date?

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Cody - direct

1 A. Signed by Sheldon Silver. The date is January 22nd, 2007.

2 Q. If you can turn to what's been marked for identification in
3 your notebook, the next document, Government Exhibit 950?

4 A. Yes.

5 Q. If you recognize Government Exhibit 950, what is it?

6 A. I do. This is the promissory note for the \$25,000
7 investment.

8 Q. Is Government Exhibit 950 a document maintained in the
9 regular course of Counsel Financial business?

10 A. It is.

11 Q. Is Government Exhibit 950 a true and accurate copy of the
12 document maintained in the books and records of Counsel
13 Financial?

14 A. It is.

15 MS. COHEN: Your Honor, the government moves
16 Government Exhibit 950.

17 MR. SHUR: No objection.

18 THE COURT: 950 is received.

19 (Government's Exhibit 950 received in evidence)

20 BY MS. COHEN:

21 Q. Mr. Cody, what is Government Exhibit 950?

22 A. This is the promissory note representing his \$25,000
23 investment dated January 12, 2007. The relevant provisions or
24 the most important provisions is that it is a three-year
25 maturity. In Section 1 it references that the maturity date is

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Cody - direct

1 three years later, January 12, 2010. Section 2 references that
2 the rate of interest is 10 percent and it's typical form of a
3 promissory note for us.

4 Q. What happens at the end the term of the promissory note at
5 the end of the three years?

6 A. It is at the investor's option they can either reinvest
7 into a new note or they are repaid.

8 Q. And if you look at the last page, please, of Government
9 Exhibit 950, who signed this promissory note with Counsel
10 Financial for \$25,000?

11 A. Michael Callahan, who is the chief financial officer.

12 Q. And I think that's on the preceding page, Mr. Coccaro?

13 A. For Counsel Financial, yeah; and page 7 was Mr. Silver.

14 Q. And when a promissory note is signed to invest in Counsel
15 Financial, what happens at or around the same time as the note
16 is signed?

17 A. The investor would either wire or provide a check for the
18 amount of the investment.

19 Q. If you will look in your binder, please, at Government
20 Exhibit 951 for identification. If you recognize the document,
21 what is it?

22 A. This is a copy of a page from a bank statement or a
23 printout -- online printout from a statement from Counsel
24 Financial's records. It looks like it was from January 12th,
25 2007 to September -- excuse me -- September 2006 to January

FBI5sill

Cody - direct

1 2007 for one of the accounts.

2 MS. COHEN: Your Honor, the government moves
3 Government Exhibit 951 into evidence.

4 MR. SHUR: No objection.

5 THE COURT: 951 is received.

6 (Government's Exhibit 951 received in evidence)

7 BY MS. COHEN:

8 Q. So, Government Exhibit 951 is a statement from Counsel
9 Financial's records?

10 A. Yes.

11 Q. There is a highlighted entry there; what is that
12 highlighted entry?

13 A. That is a record of the incoming wire of \$25,000 and it
14 notes that the wire came from JoRon Management.

15 Q. Is this \$25,000 wire to pay for Sheldon Silver's promissory
16 note?

17 A. It is.

18 Q. Why was the wire from JoRon Management?

19 A. My recollection is Mr. Silver provided the funds first to
20 JoRon Management and JoRon Management wired the funds to
21 Counsel Financial.

22 Q. After Sheldon Silver's initial \$25,000 investment in
23 Counsel Financial, did Sheldon Silver make additional
24 investments in Counsel Financial?

25 A. He did.

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Cody - direct

1 Q. How would you learn that Sheldon Silver had additional
2 money he wanted to invest in Counsel Financial?

3 A. Typically through Mr. Levy, Jordan Levy.

4 Q. And what did you know about where the additional money
5 Sheldon Silver had to invest in Counsel Financial came from?

6 A. I didn't have any idea.

7 Q. And, in general, for additional investments in Counsel
8 Financial, did the investor have to fill out another
9 subscription agreement and investor questionnaire?

10 A. Typically, no. Once they represented they were accredited
11 that covered it.

12 Q. So what was the process for additional investments in
13 Counsel Financial?

14 A. Just an expression of interest.

15 Q. And what documents had -- how did the investments get made?
16 Were they made the same note with promissory note and a wire?

17 A. Promissory note and wire or check.

18 Q. If you look at Government's Exhibits 953 and 954 in your
19 binder.

20 A. Okay.

21 Q. If you recognize them, what are they?

22 A. I do; the Exhibit 953 represents a \$75,000 investment made
23 on March 29th, 2007, it is the promissory note for that
24 investment; and 954 is a printout evidencing the wire on that
25 same date coming, again, from JoRon Management, for \$75,000.

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Cody - direct

1 Q. And is Government Exhibit 953 and 954 documents that are
2 maintained by Counsel Financial in the regular course of its
3 business?

4 A. Yes, they are.

5 Q. Are Government's Exhibits at 953 and 954 accurate copies of
6 books and records maintained by Counsel Financial?

7 A. Yes.

8 MS. COHEN: Your Honor, the government moves 953 and
9 954 into evidence.

10 THE COURT: Any objection?

11 MR. SHUR: No objection.

12 THE COURT: 953 and 954 are received.

13 (Government's Exhibits 953 and 954 received in
14 evidence)

15 BY MS. COHEN:

16 Q. Mr. Coccaro, if you could put up the first page of
17 Government Exhibit 953? Thank you.

18 Mr. Cody, what is Government Exhibit 953?

19 A. This is the promissory note related to the \$75,000
20 investment made on March 29th, 2007.

21 Q. And this is a promissory note for Sheldon Silver about a
22 little more than two months after his initial investment of
23 \$25,000?

24 A. Correct.

25 Q. And what is the rate of interest on this promissory note,

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Cody - direct

1 Government Exhibit 953?

2 A. 11 percent.

3 Q. If you look at the last page of Government Exhibit 953,
4 whose signature appears?

5 A. Mr. Silver. Sheldon Silver.

6 Q. And what is Government Exhibit 954?

7 A. This is a printout from the bank statement from the books
8 and records related to the bank statement of Counsel Financial
9 showing an incoming wire of \$75,000 on March 29th, 2007 from
10 JoRon Management.

11 Q. If you can look, please, in your binder, of what's been
12 marked Government's Exhibits 1012-1, it should be the next
13 document. If you recognize it, what is it?

14 A. This is an e-mail from myself to HSBC Bank requesting that
15 the wire from JoRon Management is sent over to Counsel
16 Financial. It provides the wire instructions with a wire
17 approval signed by Jordan Levy.

18 Q. And is the \$75,000 wire approval shown in what's been
19 marked Government Exhibit 1012-1 to cover the promissory note
20 for Sheldon Silver's second investment in Counsel Financial?

21 A. Yes.

22 MS. COHEN: Your Honor, the government moves
23 Government Exhibit 1012-1 into evidence.

24 MR. SHUR: No objection.

25 THE COURT: Okay, 1012-1 is received.

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Cody - direct

1 (Government's Exhibit 1012-1 received in evidence)

2 BY MS. COHEN:

3 Q. Mr. Cody, if you could just explain for the jury what is
4 shown here on Government Exhibit 1012?

5 A. It is an e-mail from myself to HSBC Bank evidencing the
6 request for a wire of \$75,000 from JoRon Management to Counsel
7 Financial Services on March 29th, 2007 signed by Jordan Levy.

8 Q. Jordan Levy above the signature says: Okay to wire. Is
9 that because Jordan Levy had to approve any funds leaving JoRon
10 Management?

11 A. Correct. He would have been signatory on the account.

12 Q. Did Sheldon Silver send payments to JoRon Management
13 corresponding to the amount of the wires that were sent over to
14 counsel Financial?

15 A. Yes. That's my recollection.

16 Q. And how did Counsel Financial get documents to Sheldon
17 Silver related to his investments in Counsel Financial?

18 A. I believe typically via the mail.

19 Q. If you can look, please, after this \$75,000 investment, did
20 Sheldon Silver make additional investments in Counsel
21 Financial?

22 A. Yes, he did.

23 Q. If you can look, please, in your binder at what's been
24 marked Government Exhibit 955 and 956 for identification? If
25 you recognize them, what are they?

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Cody - direct

1 A. 955 is a check cut from an account from Mr. Silver --
2 Sheldon Silver's account. It is a check for \$100,000 dated
3 June 26, 2007, signed by Mr. Silver.

4 Q. And what is Government Exhibit 956?

5 A. This is an additional promissory note for \$100,000
6 evidencing the investment made from the check on Exhibit 955.

7 Q. And is Government Exhibit 955 and 956 documents maintained
8 in the books and records of Counsel Financial?

9 A. Yes. They are.

10 Q. Are Government's Exhibits 955 and 956 accurate copies of
11 the documents maintained in the records of Counsel Financial?

12 A. Yes.

13 MS. COHEN: Your Honor, the government moves
14 Government Exhibit 955 and 956 into evidence.

15 MR. SHUR: No objection.

16 THE COURT: 955 and 956 are received.

17 (Government's Exhibits 955 and 956 received in
18 evidence)

19 BY MS. COHEN:

20 Q. Mr. Coccaro, thank you.

21 Is 955 and 956 additional investment of \$100,000 by
22 Sheldon Silver into Counsel Financial?

23 A. Yes. That's correct.

24 Q. And looking at the promissory note, please, Government
25 Exhibit 956, what is the date of this promissory note?

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Cody - direct

1 A. June 29th, 2007.

2 Q. And what is amount of the promissory note?

3 A. \$100,000.

4 Q. What is the rate of interest?

5 A. 11 percent.

6 Q. So this \$100,000 is about three months after the prior one
7 of \$75,000?

8 A. Correct. Yes.

9 Q. If you can look at the signature page of Government Exhibit
10 956, who signed the promissory note which is Government Exhibit
11 956?

12 A. Mr. Silver.

13 Q. What did you know about how Mr. Silver had this \$100,000 to
14 invest in Counsel Financial?

15 A. I didn't know that.

16 Q. Looking at government exhibits, please, in your binder for
17 identification, Government Exhibit 961 and 962. If you
18 recognize them, what are they?

19 A. I do. They're additional investments. 961 is a check for
20 \$125,000 dated April 11th, 2008; then Exhibit 962 is the
21 related promissory note dated April 15th, 2008 for \$125,000.

22 Q. Are what's marked Government's Exhibits 961 and 962
23 documents that are maintained in the books and records of
24 Counsel Financial?

25 A. Yes.

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Cody - direct

1 Q. Are Government's Exhibits for identification 961 and 962
2 accurate copies of what's maintained in the books and records
3 of Counsel Financial?

4 A. Yes.

5 MS. COHEN: The government moves Government's Exhibits
6 961 and 962 into evidence.

7 MR. SHUR: No objection.

8 THE COURT: 961 and 962 are received.

9 (Government's Exhibits 961 and 962 received in
10 evidence)

11 BY MS. COHEN:

12 Q. Mr. Coccaro, if you could pull that up? Thank you.

13 What is Government's Exhibits 961 and 962?

14 A. 961 is a check from Mr. Silver dated April 11th, 2008 in
15 the amount of \$125,000 payable to Counsel Financial services
16 signed by Mr. Silver with the notation for investment.

17 Q. And 962, what is that?

18 A. 962 is the promissory note representing the \$125,000
19 investment dated April 15th, 2008 at an interest rate of 11
20 percent.

21 Q. And if you look at the last page of Government Exhibit 962,
22 who signed the promissory note?

23 A. Mr. Silver.

24 Q. What did you know about how Sheldon Silver had another
25 \$125,000 in or about April 2008 to invest in Counsel Financial?

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Cody - direct

1 A. I wasn't aware. I was not familiar with where he got his
2 money.

3 Q. So, from January 2007 through this promissory note we just
4 looked at, Government Exhibit 962 which is April 2008, Sheldon
5 Silver had invested about \$325,000 with Counsel Financial; is
6 that right?

7 A. That's correct.

8 Q. If you can look, please, in your binder at what's marked
9 for identification Government Exhibit 965? If you recognize
10 it, what is that?

11 A. I do. This is a statement from Counsel Financial dated
12 June 23rd, 2008 and it looks like it covers investments from
13 March of 2007 through June 23rd, 2008 and it recaps the amount
14 of investments that he has made as well as interest that would
15 have been earned.

16 Q. Is Government Exhibit for identification 965 a document
17 maintained in the books and records of Counsel Financial?

18 A. It is.

19 Q. Is what's been marked Government Exhibit 965 for
20 identification a true and accurate copy of a document
21 maintained in the books and records of Counsel Financial?

22 A. It is.

23 MS. COHEN: Your Honor, the government moves
24 Government Exhibit 965 into evidence.

25 MR. SHUR: No objection.

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Cody - direct

1 THE COURT: 965 is received.

2 (Government's Exhibit 965 received in evidence)

3 BY MS. COHEN:

4 Q. Mr. Cody, is Government Exhibit 965 an account statement
5 from Counsel Financial for Sheldon Silver's account?

6 A. It is.

7 Q. Can you just explain for the jury what is shown here in
8 Government Exhibit 965?

9 A. It shows from the period of March 29th, 2007 through June
10 23rd, 2008 the investments that Mr. Silver made. It shows the
11 interest that was earned on that investment. And then, at the
12 bottom, it shows a recap of the current balances as of June
13 23rd, 2008.

14 Q. How much interest as of June 23rd, 2008 had Sheldon Silver
15 earned on his approximately \$325,000 investment?

16 A. Total interest earned on the statement is \$24,829.21.

17 Q. After June 2008 did Sheldon Silver make additional
18 investments in Counsel Financial?

19 A. Yes, he did.

20 Q. If you would look, please, in your binder, for what is
21 marked for identification Government's Exhibits 963 and 964?
22 If you recognize the documents, what are they?

23 A. I do. Exhibit 963 is an additional investment check in the
24 amount of \$225,000 dated June 20th, 2008, payable to Counsel
25 Financial services, noted investment, signed by Mr. Silver.

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Cody - direct

1 Q. What is Government Exhibit 964?

2 A. Exhibit 964 was a consolidation of this investment as well
3 as all of his prior investments to this date, dated June 23rd,
4 2008, for a total of \$569,504.99. Maturity date of this is
5 June 23rd, 2011, three years later, at an interest rate of 12
6 percent.

7 Q. Are the documents marked for identification as Government's
8 Exhibits 963 and 964 documents maintained in the regular course
9 of Counsel Financial's business?

10 A. Yes, they are.

11 Q. Are the documents Government Exhibit 963 and 964 true and
12 accurate copies of the documents as they are maintained in the
13 books and records of Counsel Financial?

14 A. Yes.

15 MS. COHEN: Your Honor, the government moves
16 Government's Exhibits 963 and 964 into evidence.

17 MR. SHUR: No objection.

18 THE COURT: 963 and 964 are received.

19 (Government's Exhibits 963 and 964 received in
20 evidence)

21 BY MS. COHEN:

22 Q. Mr. Cody, Government Exhibit 963, is that an additional
23 investment by Sheldon Silver on or about June 6 -- I mean June
24 20th, 2008, in the amount of \$225,000?

25 A. Yes. That's correct.

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Cody - direct

1 Q. And if you can explain, please, the promissory note which
2 is Government Exhibit 964, I think you mentioned it is a
3 consolidated note. Can you explain for the jury what that is?

4 A. Yes. That is a consolidation of all of the prior
5 investments Mr. Silver would have made up and through June
6 23rd, 2008 inclusive of this additional check for \$225,000, as
7 well as an inclusive of any and all interest that he would have
8 earned or accrued up until that point.

9 Q. Why did Counsel Financial consolidate Sheldon Silver's
10 investments into one promissory note, Government Exhibit 964?

11 A. We were at the point where we had multiple notes, it was
12 better to consolidate.

13 Q. And what is the rate of interest on Sheldon Silver's
14 consolidated note Government Exhibit 964, in the amount of
15 \$569,000?

16 A. 12 percent.

17 Q. If you look at the last page, please, of Government Exhibit
18 964; who signed it?

19 A. Mr. Silver.

20 Q. Did there come a time when Sheldon Silver informed Counsel
21 Financial that he wanted to make an investment in the name of
22 his wife, Rosa Silver?

23 A. Yes.

24 Q. If you will look, please, in your binder, at what's marked
25 Government Exhibit 968 for identification? If you recognize

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Cody - direct

1 it, what is it?

2 A. I do. It's a letter from Mr. Silver dated July 30th, 2010,
3 it is addressed to Mr. Ryan Kagels whose the controller for
4 Counsel Financial, stating that he would like to invest
5 \$100,000, and this investment would be in the name of his wife,
6 Rosa Silver.

7 Q. Is Government Exhibit 968 a document maintained in the
8 books and records of Counsel Financial?

9 A. Yes, it is.

10 Q. Is Government Exhibit 968 for identification a true and
11 accurate copy of the document as it is maintained in the books
12 and records of Counsel Financial?

13 A. Yes.

14 MS. COHEN: Your Honor, the government moves
15 Government Exhibit 968 into evidence.

16 MR. SHUR: No objection.

17 THE COURT: 968 is received.

18 (Government's Exhibit 968 received in evidence)

19 BY MS. COHEN:

20 Q. Mr. Cody, if you can just explain to the jury what is this
21 letter from Sheldon Silver to Counsel Financial?

22 A. It is a letter from Mr. Silver requesting to make an
23 investment of \$100,000 in his wife's name in Counsel Financial
24 on July 30th, or approximately thereabouts, for \$100,000.

25 Q. And after Sheldon Silver sent this letter and a check for

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Cody - direct

1 \$100,000 to open an account in his wife's name, did Counsel
2 Financial open an account at Counsel Financial in the name of
3 Sheldon Silver's wife Rosa Silver?

4 A. Yes, we did.

5 Q. What do you know about why Sheldon Silver wanted to open an
6 account in his wife's name?

7 A. I don't know.

8 Q. What was the process for setting up Rosa Silver's account?

9 A. Similar to Mr. Silver's initial account, we would probably
10 ask for a promissory note as well as a subscription agreement
11 and investor questionnaire.

12 Q. And if you look in your binder, please, at what's marked
13 for identification Government Exhibit 970 and 969? If you
14 recognize those documents, what are they?

15 A. I do. Exhibit the 970 is a subscription agreement. It is
16 also the accompanying exhibit which is the investor
17 questionnaire for Mrs. Silver's investment in Counsel
18 Financial.

19 Q. Are what's marked for identification Government's Exhibits
20 970 and 969 documents that are maintained in the books and
21 records of Counsel Financial?

22 A. Yes, they are.

23 Q. Are what's been marked for identification Government's
24 Exhibits 970 and 969 true and accurate copies of the documents
25 as they are maintained in the books and records of Counsel

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Cody - direct

1 Financial?

2 A. Yes.

3 MS. COHEN: Your Honor, the government moves
4 Government Exhibit 970 and 969 into evidence.

5 MR. SHUR: No objection.

6 THE COURT: 969 and 970 are received.

7 (Government's Exhibits 969 and 970 received in
8 evidence)

9 BY MS. COHEN:

10 Q. What is shown on 969 and 970?

11 A. 969 is the -- excuse me, 970 is the subscription agreement.
12 The subscription agreement is for Mrs. Silver's investment
13 signed by Mrs. Silver. The exhibit is the investor
14 questionnaire also signed by Mrs. Silver representing that
15 she's accredited.

16 Q. And did investors in Counsel Financial sometimes open up
17 accounts in the names of their spouses, partners?

18 A. Yes.

19 Q. If you can look, please, at -- I'm sorry.

20 What is the rate of interest on Rosa Silver's
21 promissory note, Government Exhibit 970?

22 A. On 970 it doesn't represent interest. On 969, which is the
23 promissory note, \$100,000 dated August 11, 2010, at the
24 interest rate of 12 percent.

25 Q. And if you can look in your binder at what's been marked

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Cody - direct

1 Government Exhibit 976, please? If you recognize it, what is
2 it?

3 A. 976 represents all of Mr. Silver's investments up and
4 through from June 23rd, 2008 up through September 17th, 2010,
5 so it is a statement as of September 17th, 2010 representing
6 all of his investments as well as interest that he would have
7 earned on those investments over that period of time.

8 Q. Is what's been marked Government Exhibit 976 a document
9 maintained in the books and records of Counsel Financial?

10 A. It is.

11 Q. Is what's been marked Government Exhibit 976 for
12 identification a true and accurate copy of a document
13 maintained in the books and records of Counsel Financial?

14 A. Yes.

15 MS. COHEN: Your Honor, the government moves
16 Government Exhibit 976 into evidence.

17 MR. SHUR: No objection.

18 THE COURT: 976 is received.

19 (Government's Exhibit 976 received in evidence)

20 BY MS. COHEN:

21 Q. Mr. Cody, what is shown here on Government Exhibit 976?

22 A. A statement from Mr. Silver representing all of his
23 investments in Counsel Financial on September 17th, 2010 --
24 excuse me, as of September 17th, 2010 including all investment
25 activities from June 23rd, 2008. It shows the principal

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Cody - direct

1 balances as well as interest earned during that time period.

2 Q. And what is the principal balance on Sheldon Silver's
3 account at Counsel Financial as of September 17th, 2010?

4 A. \$743,565.93.

5 Q. And does that amount include or exclude the \$100,000
6 Sheldon Silver invested in the name of his wife Rosa Silver?

7 A. It excludes her \$100,000.

8 Q. How much interest had Sheldon Silver's investments earned
9 at this point?

10 A. Total interest for that period was \$174,060.94.

11 Q. If you can look, please, in your binder at what's been
12 marked Government Exhibit 964 for identification? If you
13 recognize it, what is that?

14 A. This is, again, a consolidated note which represents all of
15 Mr. Silver's investments including any interest he would
16 receive as of September 17th, 2010 in the total amount of
17 \$743,565.93.

18 Q. Is what's been marked for identification Government Exhibit
19 974 a document maintained in the books and records of Counsel
20 Financial?

21 A. It is.

22 Q. And is what's been marked Government Exhibit 974 for
23 identification a true and accurate copy of the document as it
24 is maintained in the books and records of Counsel Financial?

25 A. It is.

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Cody - direct

1 MS. COHEN: Your Honor, the government moves
2 Government Exhibit 974 into evidence.

3 MR. SHUR: No objection.

4 THE COURT: 974 is received.

5 (Government's Exhibit 974 received in evidence)

6 BY MS. COHEN:

7 Q. Mr. Cody, is this another consolidated note?

8 A. It is, correct.

9 Q. What does this consolidated note consolidate?

10 A. It represents all of the investments Mr. Silver had made
11 dating back to this January of 2007 and all of his subsequent
12 investments, as well as all the interest that he would have
13 earned up and through September 17th, 2010.

14 Q. And Government Exhibit 974, the consolidated note for
15 Sheldon Silver in the amount of \$743,000, it excludes the
16 \$100,000 invested in the name of Rosa Silver; is that right?

17 A. That's correct.

18 Q. What is the rate of interest on Sheldon Silver's
19 consolidated note for \$743,000?

20 A. 12 percent.

21 Q. If you look on the last page of Government Exhibit 974, who
22 signs this promissory note?

23 A. On behalf of Counsel Financial, myself and Mr. Silver as
24 the investor.

25 Q. And there is an address here that's different from the

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Cody - direct

1 prior notes of 700 Broadway; what is this address for Sheldon
2 Silver?

3 A. That's the Weitz & Luxenberg address, the current address.

4 Q. Did there come a time when Sheldon Silver wanted to split
5 this consolidated promissory note between himself and his wife?

6 A. Yes.

7 Q. How did Sheldon Silver want to split the note? In what
8 denominations?

9 A. He wanted to split both his wife's note as well as his
10 note. The combined total, he wanted to split it in half.

11 Q. Why did Sheldon Silver want to split the combined note in
12 half?

13 MR. SHUR: Objection.

14 THE COURT: Sustained. Rephrase the question.

15 What did he tell you?

16 THE WITNESS: I didn't speak to Mr. Silver.

17 BY MS. COHEN:

18 Q. What did you learn about why Sheldon Silver wanted to split
19 the note in half?

20 MR. SHUR: Objection.

21 THE COURT: Sustained.

22 Q. How did you learn that Sheldon Silver wanted to split the
23 note in half?

24 MR. SHUR: Objection.

25 THE COURT: Overruled.

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Cody - direct

1 A. Mr. Levy told me.

2 Q. Did you receive an e-mail related to splitting the note in
3 half? Did you have e-mail correspondence with Jordan Levy
4 about splitting Sheldon Silver's note in half between himself
5 and his wife?

6 A. I don't think I had an e-mail with Mr. Levy.

7 Q. Is there a document that might refresh your recollection
8 about an e-mail correspondence about the splitting of the note?

9 MR. SHUR: Objection.

10 THE COURT: Overruled.

11 A. Is there an e-mail? There is an e-mail. I don't believe
12 there was an e-mail between myself and Mr. Levy, but I do
13 recall an e-mail.

14 (Continued on next page)

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FBIYSIL2

Cody - Direct

1 BY MS. COHEN:

2 Q. Well, is there an email between yourself and other
3 individuals within Counsel Financial about how to split the
4 note and why the note was going to be split between Sheldon
5 Silver and his wife?

6 MR. SHUR: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: Yes, there was an email.

9 BY MS. COHEN:

10 Q. I'm going to show you what's been marked for identification
11 as Government Exhibit 977.

12 If you'll look at that and tell me if it refreshes
13 your recollection about what you knew about why Sheldon Silver
14 wanted to split the note between himself and Rosa Silver.

15 THE COURT: Just yes or no. Does it refresh your
16 recollection?

17 THE WITNESS: Yes.

18 BY MS. COHEN:

19 Q. Why did Sheldon Silver want to split the note between
20 himself and Rosa Silver?

21 MR. SHUR: Objection.

22 THE COURT: Sustained.

23 MS. COHEN: Okay. I'll move on.

24 BY MS. COHEN:

25 Q. Why did you do with the knowledge that Sheldon Silver

FBIYSIL2

Cody - Direct

1 wanted to split the note between himself and his wife?

2 MR. SHUR: Objection, your Honor. To form.

3 THE COURT: Overruled.

4 THE WITNESS: Can you repeat the question.

5 BY MS. COHEN:

6 Q. What did you do as a result of Sheldon Silver's request to
7 split his note between himself and his wife?

8 A. We honored the request.

9 Q. How did you honor the request?

10 A. We split the note, took the combined balance between the
11 total amount that had been invested by Mr. Silver, including
12 all interest, up until that point as well as the investment by
13 Mrs. Silver, including her interest, and we took that total,
14 and we split that into two separate notes.

15 Q. If you can look in your binder as what's been marked for
16 identification as Government Exhibits 978 and 979.

17 If you recognize them, what are they?

18 A. These represent the new notes. Exhibit 978 represents a
19 note in the name of Mr. Silver in the amount of \$458,453.19
20 dated May 24, 2011, in the amount of 12 percent.

21 Exhibit 979, also dated May 24, 2011, in the same
22 amount, \$458,453.19, in the amount of 12 percent. This one is
23 in the name of Rosa Silver. Both notes were at 12 percent.

24 BY MS. COHEN:

25 Q. Are government exhibits marked for identification 978 and

FBIYSIL2

Cody - Direct

1 979 documents maintained in the regular course of Counsel
2 Financial's business?

3 A. Yes, they are.

4 Q. Are what's been marked for identification as Government
5 Exhibits 978 and 979 accurate copies of the documents as they
6 are maintained in the books and records of Counsel Financial?

7 A. Yes.

8 MS. COHEN: Your Honor, the government moves
9 Government Exhibits 978 and 979 into evidence.

10 MR. SHUR: No objection.

11 THE COURT: All right. 978 and 979 are received.

12 (Government's Exhibits 978 and 979 received in
13 evidence)

14 BY MS. COHEN:

15 Q. Mr. Cody, what's shown on Government Exhibits 978 and 979?

16 A. The two exhibits -- 978 is the note in the name of
17 Mr. Silver, Sheldon Silver, dated May 24, 2011, \$458,453.19
18 with a maturity date of September 17, 2013, at an interest rate
19 of 12 percent.

20 Exhibit 979 is a note in the name of Rosa Silver in
21 the same amount, \$458,453.19. The date was May 24, 2011, also
22 at 12 percent interest rate, also with a maturity date of
23 September 17, 2013.

24 Q. Are the amounts of \$458,000 shown on the promissory notes
25 978 and 979 -- is that the total amount of both Sheldon

FBIYSIL2

Cody - Direct

1 Silver's investment and the \$100,000 that was in Rosa Silver's
2 account?

3 A. Correct. It's the sum of those two investments including
4 any interest accrued to that point.

5 Q. Other than Sheldon Silver's request to split his investment
6 and the investment in the name of Rosa Silver, to combine them
7 and then split them evenly into two different notes, was there
8 any other reason Counsel Financial split the promissory notes?

9 A. No.

10 Q. If you look at the last page, please, of Government Exhibit
11 978.

12 Who signed Sheldon Silver promissory note dated
13 May 24, 2011, in the amount of \$458,000?

14 A. On behalf of the company, it was myself. On behalf of
15 Mr. Silver, it was Sheldon Silver.

16 Q. Looking at Government Exhibit 979, the promissory note in
17 the name of Rosa Silver date the May 24, 2011, in the amount of
18 \$458,000, who signed that note?

19 A. Again, on behalf of the company, it was myself. And on
20 behalf of Mrs. Silver, it was Rosa Silver.

21 Q. Looking at what's been marked for identification, the next
22 document in your binder, Government Exhibit 982.

23 If you recognize it, what is it?

24 A. This is an additional statement dated May 31, 2013, in the
25 name of Sheldon Silver. It shows all investment activity on

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Cody - Direct

1 his note from September 17, 2010, through to the date of the
2 statement, May 31, 2013.

3 Q. Is Government Exhibit 982 a document maintained in the
4 regular course of Counsel Financial's business?

5 A. It is, yes.

6 Q. Is Government Exhibit 982 for identification a true and
7 accurate copy of the document as it is maintained in the books
8 and records of Counsel Financial?

9 A. Yes.

10 Q. Before I ask to move that one in, if you could also look at
11 Government Exhibit 980.

12 If you recognize that, what is that?

13 A. This is a statement representing Rosa Silver's investment
14 from August 11, 2010, the date of her initial investment,
15 through to May 31, 2013.

16 Q. Is Government Exhibit 980 a document that's maintained in
17 the regular course of Counsel Financial's business?

18 A. Yes.

19 Q. Is what's been marked Government Exhibit 980 a true and
20 accurate copy of the document that is maintained in the regular
21 course of Counsel Financial's business?

22 A. It is, yes.

23 MS. COHEN: Your Honor, the government moves
24 Government Exhibits 982 and 980 into evidence.

25 MR. SHUR: No objection.

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Cody - Direct

1 THE COURT: 982 and 980 are received.

2 (Government's Exhibits 982 and 980 received in
3 evidence)

4 BY MS. COHEN:

5 Q. Mr. Cody, are these account statements for Sheldon Silver's
6 account and Rosa Silver's account at Counsel Financial showing
7 the amount of investment as of May 31, 2013?

8 A. Yes. That's correct.

9 Q. How much was Sheldon Silver's investment in Counsel
10 Financial worth as of May 31, 2013?

11 A. \$583,268.89.

12 Q. How much of that was the principal investment, and how much
13 of that was the interest earned by virtue of being in the
14 investment?

15 A. It's a little bit difficult to give you that exact number
16 because there is the initial investment, and then there is a
17 reduction of principal related to the transfer.

18 I don't know if I have enough on the statement to
19 determine exactly the split.

20 Q. Is it fair to say that a --

21 THE COURT: Hang on a second. You need to keep your
22 voice up. I can't even hear you here. So I'm sure they can't
23 hear you.

24 THE WITNESS: I'm sorry.

25 BY MS. COHEN:

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Cody - Direct

1 Q. Is it fair to say that a part of the \$583,000 is interest
2 that was earned on the amount of the investment?

3 A. Yes.

4 Q. And the interest rate would have been the interest rate on
5 the promissory notes that we saw which was between 11 and 12
6 later consolidated to 12 percent?

7 A. Correct.

8 Q. If you look at Government Exhibit 980, is that the
9 statement of the amount of the investment's worth for the
10 account the in name of Rosa Silver?

11 A. Yes. That's correct.

12 Q. What is the total amount of that investment? The net worth
13 as of May 31, 2013.

14 A. \$583,268.89.

15 Q. Now, you testified that some of the promissory notes that
16 Mr. Silver had were consolidated to make it -- because he had
17 too many notes, and it was easier for your business to
18 consolidate them into one note.

19 A. Correct.

20 Q. Did consolidating the note for the ease of Counsel
21 Financial's business have anything to do with why Counsel
22 Financial split Mr. Silver's \$700-plus investment and Rosa
23 Silver's \$100,000 investment, consolidated it, and then split
24 it evenly into two notes?

25 MR. SHUR: Objection.

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Cody - Direct

1 THE COURT: Overruled.

2 THE WITNESS: No.

3 BY MS. COHEN:

4 Q. Annually, what documents did you provide to Sheldon Silver
5 related to his investments in Counsel Financial?

6 A. I don't know off the top of my head. I believe that he
7 receives a monthly, if not an annual, statement similar to the
8 one we're looking at here.

9 THE COURT: Similar to -- I'm sorry.

10 THE WITNESS: Similar to the one that's exhibit --
11 that's on Exhibit 980 -- 982 for Mr. Silver, 980 for
12 Mrs. Silver.

13 THE COURT: Okay.

14 BY MS. COHEN:

15 Q. Prior to testifying here today, did you review a chart that
16 summarized the amounts of Sheldon Silver's investments in
17 Counsel Financial that were held in his name and in his wife's
18 name?

19 A. Yes, I did.

20 Q. In reviewing that chart, did you review the government
21 exhibits that you testified about here today?

22 A. Yes.

23 Q. I'll have you look in your binder at the last document,
24 Government Exhibit 1061 for identification.

25 If you recognize the document, what is it?

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1 A. This is a summary of all of the investment activity for
2 Mr. Silver, as well as Rosa Silver, from the initial investment
3 in 2007 through the end of 2014, December 31, 2014,
4 representing all of his investments, some cash that was repaid,
5 all accrued interest during that approximately eight-year
6 period, as well as the transfer which gets you down to the
7 exact balances for Mr. Silver and Mrs. Silver as of
8 December 31, 2014.

9 MS. COHEN: Your Honor, the government moves
10 Government Exhibit 1061 into evidence.

11 MR. SHUR: No objection.

12 THE COURT: 1061 is received.

13 (Government's Exhibit 1061 received in evidence)

14 BY MS. COHEN:

15 Q. Mr. Cody, if you could just walk the jury through the chart
16 to explain it.

17 A. Sure. The cash invested by Mr. Silver and Rosa Silver from
18 inception was \$650,000. There was a small amount,
19 comparatively, of cash repaid of \$8,357.66.

20 Beginning in 2007 through 12-31-2014, there is
21 approximately \$7676,62 -- not approximately. Exactly.
22 \$767,662.40 earned in interest over that eight-year period.

23 And then the last item shows the transfer from
24 Mr. Silver's account to Mrs. Silver's account in the amount of
25 \$348,609.94.

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1 So as of December 31, 2014, Mr. Silver had
2 \$704,652.37. Mrs. Silver had the same amount for a total of
3 \$1,409,304.74 as of December 31, 2014.

4 Q. Government Exhibit 1061 shows that the amount of interest
5 earned on the investment was more than double the amount of the
6 investment?

7 A. It was more than the amount of the investment. Correct.

8 THE COURT: It wasn't more than double the amount of
9 the investment.

10 MS. COHEN: I'm sorry. I misspoke, your Honor.

11 BY MS. COHEN:

12 Q. Government Exhibit 1061 -- it shows that the total balance
13 of Sheldon Silver's investment in Counsel Financial, combined
14 with the money in the name of Rosa Silver -- the total is
15 \$1.4 million.

16 A. Correct.

17 MS. COHEN: Nothing further, your Honor.

18 THE COURT: Okay.

19 How long is your cross going to be?

20 MR. SHUR: Maybe a half hour, Judge.

21 THE COURT: Why don't we go ahead and take our morning
22 break. We'll take a ten-minute break.

23 (Jury not present)

24 (Witness temporarily excused)

25 THE COURT: Okay. So, if he's got a half an hour and

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Cody - Direct

1 then we're going to roll into Mr. Levy -- is that correct?

2 MS. COHEN: Correct, your Honor.

3 THE COURT: What's the issue on Mr. Levy?

4 MR. SHUR: I'm happy to start, Judge.

5 THE COURT: Did you hand me the questions?

6 MR. SHUR: I didn't get any document. Ms. Cohen just
7 told me this morning basically what she intended to ask. My
8 understanding -- although she can correct me if I'm wrong -- is
9 that she plans to elicit from Mr. Levy that he sat as the chair
10 of a state board.

11 He was appointed by the governor, not by Mr. Silver,
12 to this board that had proposals or a proposal that, after
13 presumably being approved by different agencies, went up to the
14 PACB; that Mr. Levy discussed the proposal with Mr. Silver;
15 that Mr. Levy asked Mr. Silver to vote for it; and that
16 Mr. Silver said he would.

17 Now, Judge, just to sort of take a step back for a
18 moment, the government called a witness from the PACB who
19 testified about the operation and Mr. Silver's involvement. He
20 was a member. He had voting rights, etc.

21 They could have certainly -- my understanding from
22 your Honor's comment from yesterday evening is that any of this
23 testimony about the PACB is only relevant to the extent it
24 relates to the Glenwood 80/20 loans and Mr. Silver's
25 involvement in that since that's actually part of the alleged

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Cody - Direct

1 crimes.

2 The government could have called a witness from the
3 PACB who wasn't involved in Mr. Silver's involvement in voting
4 on those particular loans, meaning they could have called Steve
5 Pleydle. I know they interviewed them. They could have called
6 Philip Fields. They interviewed him as well.

7 Those two individuals were Mr. Silver's proxy on those
8 particular votes. Whether or not they had discussions with
9 Mr. Silver about that, they could have elicited that testimony.

10 THE COURT: Which particular votes?

11 MR. SHUR: The 80/20 loans relating to Glenwood.
12 Those are actually percipient fact witnesses about those
13 particular proposals that are relevant to the indictment.

14 What Ms. Cohen wants to introduce through Mr. Levy
15 doesn't add any additional information, relevant information,
16 about Mr. Silver's role with respect to the PACB or, more
17 importantly, Mr. Silver's role with respect to the 80/20 loans
18 that were reviewed by the PACB that are relevant to the
19 indictment.

20 The only relevance -- it's not even relevant. The
21 only significance -- and my guess as to why the government
22 wants to elicit this testimony -- is it's impermissible 404(b)
23 evidence.

24 Meaning that at the time Mr. Levy was inviting
25 Mr. Silver to make these investments with investment vehicles

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Cody - Direct

1 that he was involved in, he asked Mr. Silver to vote for a
2 project that he was involved in on the PACB, which was not
3 noticed 404(b) and is impermissible.

4 THE COURT: Okay.

5 MS. COHEN: Your Honor, what the government would like
6 to elicit from Jordan Levy is not 404(b) evidence. It is
7 simply evidence that Mr. Silver was aware of the PACB and knew
8 that it was his vote and that he could pull it. He could vote
9 no. He could be supportive.

10 It's very limited evidence, your Honor. It does not
11 relate to the 80/20 programs. It's to the broader issue that
12 the defense spent a lot of time on cross trying to mislead the
13 jury that Sheldon Silver had nothing to do basically with the
14 PACB. He was in name only and that he sent his proxy and he
15 didn't attend the meetings.

16 This evidence would tend to disprove that. It is
17 relevant. We are doing it in a very limited fashion. We are
18 not linking it to the 80/20.

19 We are not linking it to Jordan Levy's giving Sheldon
20 Silver access to the investments. We are doing it in a very
21 limited way for a very limited purpose, which is to rebut the
22 cross of Darby Putnam.

23 It was noticed. The defense has been on notice about
24 this. It was the subject of notice to dismiss the superseding
25 indictment.

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Cody - Direct

1 THE COURT: It's in the indictment.

2 MR. SHUR: Judge, in addition to the fact -- we
3 discussed yesterday that the fact that it's in the indictment
4 doesn't necessarily bless it as non-noticed 404(b).

5 Setting that aside, it's completely cumulative of the
6 testimony we heard from Ms. Putnam in terms of what
7 Mr. Silver's role is on the PACB.

8 He's a member --

9 THE COURT: I don't think so.

10 MR. SHUR: He's a member, and he's a proxy. He's a
11 member and has the ability to vote up or down. That is the
12 simple fact.

13 THE COURT: The clear implication of the
14 cross-examination was that he's a member in name only and
15 really has nothing to do with it.

16 Presuming that that were true, you would have expected
17 his response to Mr. Levy to be, I don't have anything to do
18 with the PACB. My minions handle that.

19 MR. SHUR: Judge, if the question is -- this really is
20 the only relevant question to the charges -- is whether
21 Mr. Silver played some personal role in voting on the 80/20
22 loans versus just having someone that had complete discretion
23 vote on those loans without him even knowing about it, well,
24 then Steve Pleydle and Philip Fields are the witnesses who have
25 personal knowledge of those facts.

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Cody - Direct

1 THE COURT: I disagree that that's the issue.

2 MR. SHUR: Mr. Runes, the lobbyist --

3 THE COURT: He doesn't have to -- I disagree with the
4 notion that he had to have had a personal role in voting on the
5 80/20 loans or the whole PACB is irrelevant.

6 MR. SHUR: I understand, Judge.

7 THE COURT: That's what you said.

8 MR. SHUR: Mr. Runes, who was the Glenwood lobbyist,
9 testified that he never lobbied the PACB and that Mr. Silver
10 did not intervene with respect to the 80/20 loans. That was
11 his testimony.

12 Now, I understand the government -- their theory is,
13 well, one of the reasons that Glenwood did not cut off the
14 relationship with Golberg & Iryami is this speculation, this
15 possibility, that Mr. Silver is going to vote no or take it off
16 the agenda.

17 THE COURT: Retaliate.

18 MR. SHUR: Retaliate, even though there was no
19 evidence that they were concerned that he was going to somehow
20 intervene with the PACB.

21 To make that argument, if that's their theory, the
22 only relevant facts are that he has the ability to do that, and
23 that's in the record.

24 This testimony -- in terms of the probative value of
25 this testimony versus the unfair prejudice, which is

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Cody - Direct

1 essentially suggesting to the jury that there was some type of
2 improper relationship between Mr. Levy and Mr. Silver in
3 connection with his official position -- that's not charged
4 anywhere in the indictment, and that's not noticed 404(b).

5 THE COURT: Why can't that be dealt with with a
6 limiting instruction?

7 MR. SHUR: Judge, I do not think a limiting
8 instruction comes even near curing the unfair prejudice that
9 that testimony would have.

10 Given the limiting -- it's cumulative. It really has
11 no probative value. Mr. Levy -- well --

12 THE COURT: I disagree. I think it can be dealt with
13 with a limiting instruction. I would like to see what the
14 questions are.

15 MS. COHEN: Sure, your Honor.

16 THE COURT: I realize that you probably don't have it
17 right now.

18 MR. SHUR: Judge, one other thing. Given the nature
19 of Mr. Levy's grand jury testimony in terms of -- he seems to
20 be very verbose. I've never met the man.

21 THE COURT: Neither have I.

22 MR. SHUR: I would ask that the government explain to
23 him your Honor's ruling about other matters that they've asked
24 him about. I don't want him to be blurting things out to the
25 jury, even though Ms. Cohen hasn't asked the specific questions

FBIYSIL2

Cody - Direct

1 of him.

2 MS. COHEN: I think, your Honor, respectfully, I ask
3 very specific questions.

4 THE COURT: Questions that are so specific they object
5 that you're leading.

6 MR. SHUR: That's not the point. I'm not worried
7 about the questions. I'm worried about him just voluntarily --
8 I want to make sure he's aware of the Court's ruling.

9 THE COURT: Particularly as to the PACB matters, can
10 you please make sure that he understands that it's contained
11 testimony, to the extent, not having met the man, but he is
12 preferable on that score.

13 MS. COHEN: Your Honor, I will tell him. I will write
14 out the questions.

15 THE COURT: Okay. Thank you.

16 MS. COHEN: You're welcome.

17 THE COURT: You have about five minutes left.

18 MR. MASTER: Your Honor, I think we'll need a little
19 more time to write out the questions.

20 MS. COHEN: Your Honor, I don't have to write out the
21 prefatory questions about what board did you sit on and who was
22 appointed. It's just the critical two questions.

23 THE COURT: Yes.

24 MS. COHEN: Thank you, your Honor.

25 (Recess)

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Cody - Cross

1 THE COURT: Have you shown that to Mr. Shur?

2 MS. COHEN: Your Honor, I have shown two proposed
3 questions to Mr. Shur, and he's agreed that they are fine.
4 I'll pass them up, assuming you can read my handwriting.

5 THE COURT: I'll do the best I can.

6 MR. SHUR: To be clear, Judge --

7 THE COURT: Subject to the objection.

8 MR. SHUR: Yes.

9 THE COURT: Yes. Of course.

10 (Jury present)

11 THE COURT: Mr. Cody, you're still under oath.

12 Mr. Shur.

13 MR. SHUR: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. SHUR:

16 Q. Mr. Cody, good morning.

17 A. Good morning.

18 Q. My name is Justin Shur. I, along with my colleagues,
19 represent Sheldon Silver.

20 We have never met before; right?

21 A. Correct.

22 Q. Mr. Cody, you're the president of Counsel Financial; is
23 that right?

24 A. That's correct.

25 Q. And Counsel Financial is a commercial lender?

FBIYSIL2

Cody - Cross

1 A. Correct.

2 Q. It offers loans and lines of credit?

3 A. Correct.

4 Q. And it offers these products to law firms; is that right?

5 A. That's correct.

6 Q. And Counsel Financial offers these products exclusively to
7 plaintiffs' lawyers?

8 A. Correct.

9 Q. And these plaintiffs' lawyers represent individuals who
10 have been injured; right?

11 A. That's correct.

12 Q. The loans provided by Counsel Financial help these
13 individuals; right?

14 A. Yes. They help the law firms, which, in turn, can help the
15 individuals. Correct.

16 Q. They help the law firms obtain the necessary resources so
17 they can help win the cases for their clients.

18 A. Correct.

19 Q. The loans provided by Counsel Financial help the lawyers,
20 for example, pay for medical reports?

21 A. Correct.

22 Q. And the loans provided by Counsel Financial help lawyers
23 pay for expert witnesses?

24 A. Correct.

25 Q. All of these things cost money; right?

FBIYSIL2

Cody - Cross

1 A. Yes.

2 Q. Money that the individual clients who have been injured may
3 not have; right?

4 MS. COHEN: Objection.

5 THE COURT: Sustained.

6 BY MR. SHUR:

7 Q. The lawsuits that the law firms are bringing that Counsel
8 Financial is loaning money to the law firms for -- they're
9 suing major corporations; right?

10 A. Typically. The defendants can be large or small.

11 Q. Let's talk about the larger corporations.

12 Oftentimes those corporations have limitless funds to
13 litigate these cases; is that right?

14 MS. COHEN: Objection, your Honor.

15 THE COURT: Sustained.

16 BY MR. SHUR:

17 Q. Would you say that Counsel Financial loans provided to
18 these law firms help level the playing field?

19 MS. COHEN: Objection, your Honor.

20 THE COURT: Sustained.

21 Can I see you at sidebar, please.

22 (At the sidebar)

23 THE COURT: You can establish that that they finance
24 lawsuits, but tugging at jurors' heartstrings about uneven
25 playing fields -- why is that relevant?

FBIYSIL2

Cody - Cross

1 MR. SHUR: Because it's a worthy investment. I think
2 that's why it's relevant.

3 THE COURT: There are huge issues about financing
4 lawsuits that I don't want to get into. It's not what this
5 case is all about. You say it's worthy. There are lots of
6 issues associated with this --

7 MR. SHUR: I understand, Judge.

8 THE COURT: We're not going there.

9 MR. SHUR: I'm move on.

10 THE COURT: Thank you.

11 (In open court)

12 BY MR. SHUR:

13 Q. Mr. Cody, Counsel Financial is one of the leading law firm
14 financing companies in the country; is that right?

15 A. That's correct.

16 Q. Since it was founded, Counsel Financial has provided more
17 than \$500,000,000 in credit lines to attorneys; is that
18 correct?

19 A. That's correct.

20 Q. And Counsel Financial has received numerous endorsements
21 for its work; right?

22 A. Correct.

23 Q. It's been endorsed by the American Association for Justice;
24 right?

25 MS. COHEN: Objection, your Honor.

FBIYSIL2

Cody - Cross

1 THE COURT: Sustained.

2 BY MR. SHUR:

3 Q. Mr. Cody, the prosecutor on direct examination asked you if
4 Counsel Financial is regulated.

5 Do you recall that?

6 A. I do.

7 Q. It's not an investment adviser; right?

8 A. Correct.

9 Q. It's not regulated by the Securities and Exchange
10 Commission?

11 A. That's correct.

12 Q. But it's a commercial lender; right?

13 A. Correct.

14 Q. And there are rules and regulations and laws that apply to
15 commercial lenders; right?

16 A. That's correct.

17 Q. That Counsel Financial has to comply with; right?

18 A. Yes.

19 Q. Does Counsel Financial employ individuals who one of their
20 responsibilities is to ensure compliance with those laws?

21 A. Yes.

22 Q. And you're a CPA; right?

23 A. I am.

24 Q. Is Counsel Financial -- is it audited?

25 A. We are.

FBIYSIL2

Cody - Cross

1 Q. Internally?

2 A. We are audited by the bank, our senior lender, every
3 quarter. And we are audited annually by a public accounting
4 firm.

5 Q. So this is an outside accounting firm?

6 A. Correct.

7 Q. That conducts an audit of Counsel Financial's books and
8 records?

9 A. That's correct.

10 Q. Which firm is that?

11 A. They're called Freed Maxick.

12 Q. It's a reputable accounting firm; correct?

13 A. Yes. It's a large accounting firm in western New York.

14 Q. Mr. Cody, I believe you mentioned on direct examination
15 that many of the investors in Counsel Financial are friends and
16 family members of other investors.

17 Is that right?

18 A. Correct.

19 Q. But there are also investors who have no relation to
20 existing investors; right?

21 A. Yes. That's correct.

22 Q. Who seek Counsel Financial out; right?

23 A. Yes.

24 Q. Because Counsel Financial is not a hidden secret, is it?

25 A. Not in our industry.

FBIYSIL2

Cody - Cross

1 Q. Well, you have physical offices; correct?

2 A. Correct.

3 Q. They're located in Williamsville, New York, is that right?

4 A. That is correct.

5 Q. That's near Buffalo?

6 A. It's a suburb of Buffalo.

7 Q. And Counsel Financial is listed in the Buffalo's local
8 business directory?

9 A. Yes.

10 Q. It also has a significant presence on the Internet; right?

11 A. Correct.

12 Q. There's a website for Counsel Financial; right?

13 A. There is.

14 Q. And Counsel Financial is on LinkedIn?

15 A. Yes.

16 Q. What about Twitter?

17 A. Yes.

18 Q. Facebook?

19 A. Yes.

20 Q. There's a Counsel Financial blog; right?

21 A. Correct.

22 Q. I believe you mentioned that Jordan Levy is an investor in
23 Counsel Financial. Is that right?

24 A. Yes, he is.

25 Q. I believe you testified that Mr. Levy had introduced

FBIYSIL2

Cody - Cross

1 Mr. Silver to Counsel Financial; right?

2 A. Correct.

3 Q. At the time though that Mr. Silver invested, first
4 invested, in Counsel Financial, you were actually not employed
5 by Counsel Financial.

6 Is that right?

7 A. That is correct.

8 Q. You understand that Mr. Levy -- you worked with Mr. Levy;
9 right?

10 A. I did.

11 Q. And you understood that Mr. Levy and Mr. Silver were
12 friends; right?

13 A. Yes.

14 Q. And it wasn't unusual, in your experience, for Mr. Levy to
15 recommend a friend to Counsel Financial; right?

16 A. Correct.

17 Q. Mr. Levy knows a lot of people?

18 MS. COHEN: Objection, your Honor.

19 THE COURT: Sustained.

20 BY MR. SHUR:

21 Q. You worked in the same company as Mr. Levy; right?

22 A. I did.

23 Q. You spent a lot of time with him?

24 A. I did.

25 Q. He's a big networker; right?

FBIYSIL2

Cody - Cross

1 MS. COHEN: Objection, your Honor.

2 THE COURT: Sustained.

3 BY MR. SHUR:

4 Q. In addition to Mr. Silver, Mr. Levy brought in many other
5 investors to Counsel Financial; right?

6 A. He did.

7 Q. Approximately how many would you say?

8 A. Twenty.

9 Q. Twenty investors who were friends? Yes?

10 A. Friends or business associates of his.

11 Q. Okay.

12 A. That was an approximation obviously.

13 Q. Of course. Approximately 20.

14 A. Yes. Approximately 20.

15 Q. I just want to clarify something. I think you mentioned on
16 direct examination that there was a former mayor of Buffalo
17 that invested in Counsel Financial.

18 A. I said there was a former politician. Correct.

19 Q. Do you know whether he was the mayor of Buffalo?

20 A. He was prior. Correct.

21 Q. This was a friend of Mr. Levy's?

22 A. Yes.

23 Q. Mr. Levy introduced him to Counsel Financial?

24 A. Yes.

25 Q. He was also a former New York State senator?

FBIYSIL2

Cody - Cross

1 A. I don't know that.

2 Q. The money that the former mayor invested in Counsel
3 Financial wasn't his personal money; right?

4 A. I believe it was a fund, a campaign fund.

5 Q. It was his campaign funds?

6 A. I believe.

7 Q. So these were funds that the mayor had raised from donors
8 and contributors when he was in public office?

9 MS. COHEN: Objection.

10 THE COURT: Overruled.

11 THE WITNESS: I assume. I don't know the origination
12 of it.

13 BY MR. SHUR:

14 Q. But they came from a campaign fund account?

15 A. I believe so. Correct.

16 Q. And Counsel Financial helped him invest this money?

17 A. Helped him invest -- he made an investment. The fund made
18 an investment.

19 Q. Into Counsel Financial.

20 A. Correct.

21 Q. There's nothing improper about that; right?

22 MS. COHEN: Objection, your Honor.

23 THE COURT: Sustained.

24 BY MR. SHUR:

25 Q. You mentioned that Mr. Silver and Mr. Levy were friends.

FBIYSIL2

Cody - Cross

1 Mr. Silver was also friends with other investors at
2 Counsel Financial; right?

3 A. I'm sure. I don't know his network.

4 Q. Well, let me ask a more pointed question.

5 THE COURT: You said you're sure. Are you just
6 agreeing with him?

7 THE WITNESS: Other investors included some of the
8 owners which he had worked with.

9 THE COURT: Okay.

10 THE WITNESS: So I assume they were friends as well.

11 BY MR. SHUR:

12 Q. Let me ask you about that. Perry Weitz of Weitz &
13 Luxenberg is actually the chairman of Counsel Financial.
14 Right?

15 A. That is correct.

16 Q. And Arthur Luxenberg, the Luxenberg of Weitz & Luxenberg,
17 is the vice-chairman; is that correct?

18 A. That is correct.

19 Q. And you understood that Mr. Silver was a lawyer at Weitz &
20 Luxenberg; right?

21 A. I did.

22 Q. And that he was friends with Perry Weitz?

23 A. I did.

24 Q. And friends with Arthur Luxenberg?

25 A. Yes.

FBIYSIL2

Cody - Cross

1 Q. And Mr. Silver wasn't the only other Weitz & Luxenberg
2 lawyer who invested in Counsel Financial; right?

3 A. That's correct.

4 Q. Charles Ferguson invested in Counsel Financial; right?

5 A. Yes, he did.

6 Q. He's an attorney with Weitz & Luxenberg?

7 A. Yes, he is.

8 Q. And there were other Weitz & Luxenberg lawyers that
9 invested?

10 A. I think so. Yes.

11 Q. Is it fair to say that Perry Weitz, being the chairman of
12 Counsel Financial, was an important investor in the company?

13 A. Yes.

14 MS. COHEN: Objection, your Honor.

15 THE COURT: Overruled.

16 BY MR. SHUR:

17 Q. The prosecutor showed you a few promissory notes.

18 Do you remember that?

19 A. I do.

20 Q. Can you tell us, sort of in plain English, what that is, a
21 promissory note, as it applies here.

22 A. It's the agreement that represents an investor making an
23 investment and our obligation to pay the investment plus
24 interest.

25 Q. I noticed on the note it says "subordinated promissory

FBIYSIL2

Cody - Cross

1 note".

2 What does that mean?

3 A. It means that it's subordinated to our bank. So, in the
4 event that something were to go wrong or there's a default, our
5 bank, the senior lender, is repaid first. They have a priority
6 of repayment over the subordinated investors.

7 Q. So the bank gets paid first before the investor.

8 A. That's correct.

9 Q. So is it fair to say that there's some risk to the
10 investment?

11 A. Yes.

12 Q. And this risk applied to Mr. Silver's investment just like
13 it applied to every other investor?

14 A. Yes. It would be the same.

15 Q. So if there was a loss to Mr. Silver's account based on the
16 investment, Mr. Silver would incur that loss; right?

17 A. Correct.

18 Q. I want to ask you about the term "accredited investor."

19 In particular, there was an investor questionnaire
20 that we looked at.

21 Do you remember that?

22 A. I do.

23 Q. It's asking questions about who the investor is and their
24 net worth and their income.

25 Right?

FBIYSIL2

Cody - Cross

1 A. Yes.

2 Q. One of the reasons that Counsel Financial has investors
3 complete this document is I think you mentioned Counsel
4 Financial is a somewhat complex investment.

5 Right?

6 A. Correct.

7 Q. And you want to sort of gauge the sophistication level of
8 the investor.

9 A. That they understand what they're doing.

10 Q. You want to make sure that -- I didn't mean to cut you off,
11 sir.

12 THE COURT: Please let him finish the answer.

13 THE WITNESS: Just that they understand the investment
14 and that they are capable of understanding and making the
15 investment.

16 BY MR. SHUR:

17 Q. You want to make sure the investor understands the risks
18 and the rewards.

19 A. Correct.

20 Q. That's in the investor's best interests; right?

21 A. It is.

22 Q. And it's also in Counsel Financial's best interests; right?

23 A. It is.

24 Q. And that document is the same document that all other
25 investors in Counsel Financial complete; is that right?

FBIYSIL2

Cody - Cross

1 A. That's correct.

2 Q. And based on the responses provided in Mr. Silver's
3 questionnaire, Counsel Financial determined that he was an
4 accredited investor.

5 A. Correct.

6 Q. And, if Counsel Financial determined he was not an
7 accredited investor, he would not have been permitted to
8 invest.

9 Is that fair?

10 A. That's correct.

11 Q. The prosecutor asked you if you knew the source of
12 Mr. Silver's money that was invested in Counsel Financial. And
13 I believe you said you didn't know. Right?

14 A. Correct.

15 Q. To be clear, when Mr. Silver first invested, you didn't
16 work at Counsel Financial; right?

17 A. Correct.

18 Q. Mr. Silver never said to you, Mr. Cody, I refuse to tell
19 you where my money comes from, did he?

20 A. He did not. I don't know -- I don't recall ever speaking
21 with Mr. Silver.

22 Q. So you've never had a conversation with Mr. Silver?

23 A. I don't believe so.

24 Q. Have you ever met him?

25 A. I saw him across the room at one point.

FBIYSIL2

Cody - Cross

1 Q. You didn't scream across the room, where do you get your
2 money from?

3 MS. COHEN: Objection, your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: I did not.

6 BY MR. SHUR:

7 Q. You didn't do that?

8 A. I didn't ask him.

9 Q. Is it fair to say it wasn't unusual for you not to ask
10 investors where their money came from?

11 A. Correct.

12 Q. So you didn't ask investors on a routine basis for their
13 paystubs?

14 A. I did not.

15 Q. But you did determine whether or not all of your investors,
16 including Mr. Silver, are accredited investors; right?

17 A. Correct.

18 Q. While you didn't have any conversations with Mr. Silver
19 about the source of his funds or anything else for that matter,
20 you did know that he was an attorney at Weitz & Luxenberg;
21 right?

22 A. I did.

23 Q. And you did know that Weitz & Luxenberg is a successful law
24 firm; right?

25 A. Correct.

FBIYSIL2

Cody - Cross

1 Q. One of the reasons you knew that was because the chair and
2 the vice-chair of Counsel Financial are the two principals of
3 Weitz & Luxenberg; right?

4 A. Yes.

5 Q. The way Mr. Silver made his investment in Counsel Financial
6 was by check; right? In certain instances.

7 A. In certain instances, yes. The first couple were via wire,
8 and then it was via check.

9 Q. He didn't drop a bag of cash off at your office, did he?

10 A. He did not.

11 Q. So I'd like to take a look at some of the checks. Why
12 don't we start with Government Exhibit 961.

13 MR. SHUR: If we could publish that to the jury,
14 please. If we could blow up the check itself.

15 BY MR. SHUR:

16 Q. Mr. Cody, is this one of the checks that Mr. Silver
17 tendered to Counsel Financial to make an investment?

18 A. It is.

19 Q. It's a check from HSBC; right?

20 A. Correct.

21 Q. And it's paid to the order of Counsel Financial Services;
22 right?

23 A. Yes.

24 Q. And in the "For" line, it says "Investment;" right?

25 A. Correct.

FBIYSIL2

Cody - Cross

1 Q. In fact, it was being used to make an investment; right?

2 A. Yes.

3 Q. It's from a business checking account; right?

4 MS. COHEN: Objection, your Honor.

5 THE COURT: Sustained.

6 BY MR. SHUR:

7 Q. Well, on the face of the check, it says it's coming from an
8 account of Sheldon Silver, attorney at law.

9 Do you see that?

10 A. I do.

11 Q. Is there any reason to doubt that that's the check or the
12 account it came from?

13 A. I have no reason to doubt it.

14 (Pause)

15 BY MR. SHUR:

16 Q. And the address there, 180 Maiden Lane -- do you recognize
17 that address?

18 A. Yes. I believe it's the former Weitz & Luxenberg office.

19 MR. SHUR: Let's take a look at Government Exhibit
20 955, please.

21 BY MR. SHUR:

22 Q. This is another check that was provided to Counsel
23 Financial by Mr. Silver; right?

24 A. Yes.

25 Q. In order to make an investment; correct?

FBIYSIL2

Cody - Cross

1 A. Correct.

2 Q. And, again, it's from an HSBC bank account; right?

3 A. Yes.

4 Q. And on the "Subject" line, it clearly says, "Investment;"
5 right?

6 A. Yes.

7 Q. That's what the money was being used for; correct?

8 A. Yes. For the promissory note.

9 Q. It's paid to the order of Counsel Financial Services;
10 right?

11 A. Yes.

12 Q. That's where the money was being invested?

13 A. Yes.

14 Q. And it's from, again, Sheldon Silver, attorney at law;
15 right?

16 A. Yes.

17 Q. And then we see Weitz & Luxenberg's business office
18 address; correct?

19 A. Correct.

20 Q. Did you receive this check?

21 A. Me personally, no. I would think it would have come to my
22 office, our office.

23 Q. Okay.

24 A. I'm sorry. This is in 2007. So this was before I was at
25 Counsel Financial.

FBIYSIL2

Cody - Cross

1 Q. When did you join Counsel Financial?

2 A. February of 2008.

3 MR. SHUR: Let's take a look at Government Exhibit
4 963.

5 BY MR. SHUR:

6 Q. Mr. Cody, this is another check that Mr. Silver provided to
7 Counsel Financial to make in investment; correct?

8 A. Correct.

9 Q. And, again, in the "For" line it says "Investment." Right?

10 A. Yes.

11 Q. And it's made out to Counsel Financial Services; correct?

12 A. Correct.

13 Q. From the Sheldon Silver, attorney at law account; correct?

14 A. Correct.

15 Q. It has the Weitz & Luxenberg business address there; right?

16 A. It does.

17 Q. You were at Counsel Financial at this time; correct?

18 A. Yes, I was.

19 Q. Was there any confusion about where there money was coming
20 from when you received the check?

21 MS. COHEN: Objection, your Honor.

22 THE COURT: I don't understand the question.

23 MR. SHUR: Sure.

24 BY MR. SHUR:

25 Q. When you got this check, were you confused about what to do

FBIYSIL2

Cody - Cross

1 with it?

2 A. I don't know that I would have received it myself, but no.
3 It was clearly for an investment.

4 Q. It was clearly for an investment?

5 A. A promissory note.

6 Q. It's clearly to Counsel Financial Services; right?

7 A. Yes.

8 Q. It's clearly from Sheldon Silver, attorney at law; right?

9 A. Yes.

10 MS. COHEN: Objection, your Honor.

11 THE COURT: Overruled.

12 BY MR. SHUR:

13 Q. To your knowledge, did anyone reach out to Mr. Silver and
14 say, I don't understand why we're getting this check and where
15 the money is coming from?

16 A. No, not to my knowledge.

17 MR. SHUR: One more exhibit, Government Exhibit 916,
18 please.

19 Mr. Coccaro, can we publish it to the jury, please.
20 If we could blow up just the bottom check. Thank you.

21 BY MR. SHUR:

22 Q. Mr. Cody, this is another check that was provided to
23 Counsel Financial for an investment; right?

24 A. Yes.

25 Q. It's from the Sheldon Silver, attorney at law account, at

FBIYSIL2

Cody - Cross

1 least according to the face of the check.

2 Right?

3 A. Correct.

4 Q. You see that the address is crossed out there?

5 A. I do.

6 Q. You understood that Weitz & Luxenberg moved their offices;
7 right?

8 A. Yes.

9 Q. From Maiden Lane to Broadway?

10 A. Correct.

11 Q. It was around this time period. Do you recall?

12 A. I don't recall the specific time they moved, but it was
13 around that time frame, yes.

14 Q. Made to Counsel Financial Holdings; correct?

15 A. Correct.

16 Q. In the "For" line, it says, "New account in the name of:
17 Rosa Silver;" right?

18 A. Correct.

19 Q. This was the money that was being provided to Counsel
20 Financial to invest for Mr. Silver's wife.

21 A. Correct.

22 Q. Again, did anyone, to your knowledge, follow up with
23 Mr. Silver because they weren't sure what to do with this
24 check?

25 A. No. We would have followed up with documentation for the

FBIYSIL2

Cody - Cross

1 investment.

2 Q. But is it fair to say it's pretty clear from the check, a
3 new account in the name of Rosa Silver, what the money was to
4 be used for. Right?

5 A. Yes. And there was an accompanying letter.

6 MR. SHUR: Why don't we take a look at that letter.
7 It's right behind this pop-out.

8 BY MR. SHUR:

9 Q. The letter is from Mr. Silver; correct?

10 A. Correct.

11 Q. It's to Ryan Kagels; correct?

12 A. Yes.

13 Q. He's the comptroller of Counsel Financial?

14 A. He's the controller. Yes. He's the controller. It's a
15 technically incorrect name, but yes.

16 Q. The "Re" line says "New account for Rosa Silver;" right?

17 A. It does.

18 Q. The body of the letter says, "As per our discussion,
19 enclosed please find my check," and then it says, "to be
20 deposited into any wife's new account with Counsel Financial
21 Holdings;" right?

22 A. Yes.

23 Q. It says, "As always, many thanks for your continued
24 courtesy and cooperation. Very truly yours, Sheldon Silver."

25 Right?

FBIYSIL2

Cody - Cross

1 A. Yes.

2 Q. And it has an enclosed?

3 A. Yes.

4 Q. And the check was enclosed; right?

5 A. Yes.

6 Q. It wasn't unusual for investors at Counsel Financial to
7 have family members invest in Counsel Financial as well; right?

8 A. That's correct.

9 Q. In fact, Jordy Levy's family members had invested in
10 Counsel Financial; right?

11 A. Correct.

12 Q. His son was an investor?

13 A. Yes. I believe so.

14 Q. His mother-in-law was an investor?

15 A. Correct.

16 Q. I believe the prosecutor asked you what you knew about why
17 Mr. Silver opened an investment for his wife.

18 Do you remember that question?

19 A. I do.

20 Q. And you said you didn't know anything; right?

21 A. Correct.

22 Q. Because you never had a conversation with Mr. Silver;
23 correct?

24 A. Correct.

25 Q. When people, existing investors, open investments for their

FBIYSIL2

Cody - Cross

1 family members, their loved ones, do you ask them why they're
2 doing that?

3 A. No.

4 Q. So you didn't ask Mr. Levy why he was opening an account
5 for his son?

6 A. I did not.

7 Q. You didn't ask Mr. Levy why he was opening an account for
8 his mother-in-law?

9 A. I did not.

10 Q. It's not unusual for a single investor at Counsel Financial
11 to have multiple notes; is that right?

12 A. That's correct.

13 Q. Sometimes they consolidate notes; right?

14 A. Correct.

15 Q. Sometimes they split notes; right?

16 A. Correct.

17 Q. And there are reasons to do that; correct?

18 A. Yes.

19 Q. Tax reasons; right?

20 A. It's the decision of the investor.

21 Q. Sure. But there are perfectly legitimate reasons to do
22 that; right?

23 A. Sure.

24 Q. At the time Mr. Silver invested in Counsel Financial, how
25 many investments were in the fund? Do you know?

FBIYSIL2

Cody - Cross

1 THE COURT: How many what? Investors?

2 MR. SHUR: Investments.

3 BY MR. SHUR:

4 Q. How many investors were in the fund?

5 A. When he originally invested in 2007 -- this might not be
6 exactly accurate -- but there was, I believe, in excess of 50
7 investors, around 50.

8 THE COURT: 5-0?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 BY MR. SHUR:

12 Q. What about towards the end of the investment?

13 A. I'd have to look at specific dates, but we have over 100.

14 Q. And those are investors; right?

15 A. Yes.

16 Q. And each investor can have multiple accounts; right?

17 A. Correct.

18 Q. Do you know how many accounts there are?

19 A. I don't, but -- I don't know a specific number, but there
20 are probably upwards of 150.

21 Q. And all of these investors fill out the subscription
22 agreement we saw; right?

23 A. Yes.

24 Q. They all fill out the investor questionnaire we saw; right?

25 A. Yes.

FBIYSIL2

Cody - Cross

1 Q. And they all have to sign a promissory note; right?

2 A. Correct.

3 Q. And Mr. Silver completed an investor questionnaire; right?

4 A. He did.

5 Q. He completed a subscription agreement; correct?

6 A. He did.

7 Q. And he signed a promissory note; right?

8 A. He did.

9 Q. And Rosa Silver signed a promissory note as well; right?

10 A. Correct.

11 Q. They weren't treated any differently from any other
12 investors; correct?

13 A. That's correct.

14 Q. You mentioned the promissory note is like a contract. Did
15 I hear you correctly?

16 A. I said agreement, but yes.

17 Q. An agreement. Okay.

18 Like most agreements, each party has rights; correct?

19 A. Correct.

20 Q. And each party has responsibilities; correct?

21 A. Correct.

22 Q. This is a legal and binding agreement between Counsel
23 Financial and the investor; right?

24 A. Correct.

25 Q. And, like all other investors -- well, let me ask you this.

FBIYSIL2

Cody - Cross

1 Withdrawn.

2 Their interest rate or the return on the investment in
3 Counsel Financial was based in part on the size of the
4 investment; is that right?

5 A. Correct.

6 Q. Is it fair to say that most investors in Counsel Financial
7 received 11 to 12 percent?

8 A. Yes.

9 Q. And Mr. Silver received 11 percent for a period of time;
10 right?

11 A. Correct.

12 Q. And his account grew, and at some point he received
13 12 percent; right?

14 A. Correct.

15 Q. But he didn't receive higher than 12 percent; is that
16 right?

17 A. He did not.

18 Q. Some investors received as high as 14 percent; correct?

19 A. Correct.

20 Q. For example, Mr. Levy received a higher rate; right?

21 A. Possibly. I don't recall. It's certainly possible.

22 Q. If he did, it was because his investment was greater;
23 correct?

24 MS. COHEN: Objection, your Honor.

25 THE COURT: Overruled.

FBIYSIL2

Cody - Cross

1 About how much longer are you going to be, Mr. Shur?

2 MR. SHUR: Judge, I would say ten or 15 minutes.

3 THE COURT: Okay.

4 THE WITNESS: The answer is correct. He had a larger
5 investment. So if he had a higher interest rate, that would
6 have been part of the reason at least.

7 THE COURT: You've got to keep your voice up.

8 THE WITNESS: I apologize, your Honor.

9 BY MR. SHUR:

10 Q. As far as Mr. Silver's return on his investment, he wasn't
11 treated differently from other investors; right?

12 A. He was not.

13 Q. As an investor in Counsel Financial, you can either accrue
14 interest and keep it in your Counsel Financial account, or you
15 could get paid on the interest by Counsel Financial.

16 Right?

17 A. That's correct.

18 Q. And Mr. Silver elected to accrue interest; right?

19 A. Yes, he did.

20 THE COURT: Does the accrued interest in turn get
21 invested in accrued interest itself at 12 percent or whatever
22 that rate is?

23 THE WITNESS: It does, yes. So it compounds.

24 THE COURT: It compounds. At the rate of the note?

25 THE WITNESS: At the rate of the note, yes.

FBIYSIL2

Cody - Redirect

1 MR. SHUR: One moment, Judge.

2 (Pause)

3 BY MR. SHUR:

4 Q. Just to be clear, you used the phrase "accrued interest."

5 Can you just sort of tell us what that means, please.

6 A. Yes. There's an interest rate that they receive for the
7 note. If it's not paid to them, we pay on a monthly basis if
8 they want to take their interest.

9 If they don't decide to take their interest, then the
10 size of their note just grows due to the accrual of interest
11 and the interest staying inside of the note.

12 Q. That's what Mr. Silver did here; is that right?

13 A. That's correct.

14 Q. Just to follow up on something you said, you said, while
15 you never met Mr. Silver, there was one time where you saw him
16 across a room; right?

17 A. Yes.

18 Q. Was that at Weitz & Luxenberg?

19 A. It was.

20 MR. SHUR: Nothing further, Judge.

21 THE COURT: Okay. Ms. Cohen?

22 MS. COHEN: Very briefly, your Honor.

23 REDIRECT EXAMINATION

24 BY MS. COHEN:

25 Q. Counsel Financial is not an investment that's opened to the

FBIYSIL2

Cody - Redirect

1 general public; right?

2 A. We don't mark it for investors.

3 Q. And you don't advertise for investors; right?

4 A. Correct.

5 Q. So on the blogs or the Facebooks or Twitter page -- you're
6 not doing that -- withdrawn, your Honor.

7 On the blogs or the Facebook or Twitter, you don't
8 publish a website of Counsel Financial?

9 A. We do not.

10 Q. You were asked some questions on cross-examination about
11 investors who split notes for legitimate reasons; right?

12 A. Correct.

13 Q. When Sheldon Silver split his notes combining the \$100,000
14 into the \$750,000 note and then split it evenly between him and
15 his wife, did you know what reason he was doing that for?

16 MR. SHUR: Objection.

17 THE COURT: Overruled.

18 Did you know? Yes or no?

19 THE WITNESS: Not directly from Mr. Silver. My
20 understanding was --

21 MR. SHUR: Objection, Judge.

22 THE COURT: Sustained.

23 BY MS. COHEN:

24 Q. Did you know if Sheldon Silver wanted to split his note for
25 a legitimate reason or a not legitimate reason?

FBIYSIL2

Cody - Redirect

1 MR. SHUR: Objection.

2 THE COURT: Sustained.

3 BY MS. COHEN:

4 Q. Mr. Cody, when Sheldon Silver got into Counsel Financial
5 investments on the subsequent investments, was he given access
6 to those investments through Jordan Levy?

7 A. Jordan was the one who would speak with us more frequently
8 than anybody else. But, once he had an investment, he could
9 have gone direct, and he may have. I don't recall
10 specifically.

11 Q. But Perry Weitz and Arthur Luxenberg didn't have anything
12 to do with getting Sheldon Silver into Counsel Financial?

13 A. My understanding is it was through Jordan.

14 MS. COHEN: No further questions, your Honor.

15 THE COURT: Thank you. You can step down.

16 (Witness excused)

17 THE COURT: Call your next witness.

18 MS. COHEN: Your Honor, the government calls Jordan
19 Levy.

20 (Continued on next page)

21

22

23

24

25

FBI5sil3

Levy - direct

1 THE DEPUTY CLERK: Mr. Levy, please, take the witness
2 stand and remain standing.

3 JORDAN LEVY,

4 called as a witness by the Government,

5 having been duly sworn, testified as follows:

6 THE DEPUTY CLERK: Please state your full name and
7 spell your last name, slowly, for the record.

8 THE WITNESS: Jordan Levy. L-E-V-Y.

9 THE COURT: Ms. Cohen.

10 MS. COHEN: Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MS. COHEN:

13 Q. Mr. Levy, what is your educational background?

14 A. I have a college degree from State University of New York
15 at Buffalo.

16 Q. Where did you work after graduating college?

17 A. New York State Senate.

18 Q. What did you do in the New York State Senate?

19 A. I was an administrative assistant to a state senator.

20 Q. How long did you work in the New York State Senate?

21 A. Slightly less than five years.

22 Q. What did you do after you left the New York State Senate?

23 A. I went to work in an advertising agency.

24 Q. How long did you work at the advertising agency?

25 A. Two different agencies over two years.

FBI5s1l3

Levy - direct

1 Q. What type of job did you have at the two different
2 advertising agencies?

3 A. I was an account executive.

4 Q. What does it mean, in general, being an account executive?

5 A. I would find new customers, and then I would help manage
6 their advertising.

7 Q. What did you do after you left the advertising business?

8 A. With one of my clients we started a business.

9 Q. What type of business did you start?

10 A. Computer product distribution.

11 Q. What type of computer products?

12 A. We were distributing all kinds of products; software,
13 hardware, computers, peripherals, supplies, etc.

14 Q. How long were you in business distributing computer
15 products with your former client?

16 A. We started that business in late '82 and we sold the
17 company in the summer of '88 -- 1988.

18 Q. What else did you do while you ran that business?

19 A. Nothing.

20 Q. When you sold the business in 1988, I believe --

21 A. Correct.

22 Q. -- what did you do then?

23 A. I went to work for a company called Software Etc.

24 Q. What was Software Etc.?

25 A. They're now known as GameStop. They're a retailer of video

FBI5sil3

Levy - direct

1 game and computer products throughout the country.

2 Q. What did you do for GameStop?

3 A. I was the chief merchant and chief operating officer.

4 Q. How long did you work at GameStop?

5 A. One year.

6 Q. What did you do when you left GameStop?

7 A. Returned to Buffalo to start another business with my
8 former partner.

9 Q. Who was your former partner that you started business with
10 in Buffalo?

11 A. Ron Schreiber.

12 Q. What business did you start with Ron Schreiber in Buffalo?

13 A. Initially the computer product distribution business called
14 Software Distribution Services.

15 Q. And what other businesses, over time, did you develop with
16 Ron Schreiber?

17 A. When I came back we started a business that was selling
18 closeout and discontinued software and hardware products.

19 After that we started a company called Upgrade Corporation of
20 America.

21 THE COURT: Did you say upgrade?

22 THE WITNESS: Upgrade. Upgrade. Sorry.

23 THE COURT: If you can pull the microphone in front of
24 you?

25 THE WITNESS: Upgrade corporation of America.

FBI5sil3

Levy - direct

1 THE COURT: That's too close.

2 THE WITNESS: I'm not good at this.

3 THE COURT: Just relax.

4 BY MS. COHEN:

5 Q. When did you return to Buffalo and begin starting
6 businesses with Ron Schreiber?

7 A. The second time, Labor Day of 1989.

8 Q. And, over time, have you continued to develop different
9 businesses and done business with Ron Schreiber?

10 A. We are still partners today, yes.

11 Q. And what are you partners in?

12 A. Today, a number of businesses.

13 Q. Is there a name for your partnership with Ron Schreiber?

14 A. Among many, but primarily JoRon Management.

15 Q. What is JoRon Management?

16 A. It is a holding company for most of our investments.

17 Q. In general, what type of investments have you worked on
18 over the past 31-plus years?

19 A. Most of them have been around the technology sector, but in
20 addition to that there has been a number of other different
21 kinds of investments including real estate and other financial
22 services businesses.

23 Q. And what do you do with respect to the various investments
24 that you work on?

25 A. Primarily we are investors, we are not operators.

FBI5sil3

Levy - direct

1 Q. Who else are the other investors in the various companies
2 that you help get investors for?

3 A. It is a wide variety from institutions to individuals.

4 Q. Do you know what the term "venture capital" is?

5 A. Yes, I do.

6 Q. What is venture capital?

7 A. Venture capital is a term that is used for investing in
8 high-risk investments.

9 Q. Do you consider some of the investments that you work on to
10 be venture capital investments?

11 A. Yes, I do.

12 Q. Do you know the defendant Sheldon Silver?

13 A. Yes, I do.

14 Q. How did you meet Sheldon Silver?

15 A. How I met him initially?

16 Q. Yes.

17 A. Through the State University of New York at Buffalo.

18 Q. How did you meet Sheldon Silver through the State
19 University at Buffalo?

20 A. The Speaker came to Buffalo to be part of a round table
21 hosted by the University that was put on by the President of
22 the University where community and business leaders sat around
23 the table to talk to the Speaker about issues affecting Western
24 New York and Buffalo.

25 Q. When was this forum where you first met Sheldon Silver?

FBI5sil3

Levy - direct

1 A. I believe 2001.

2 Q. And after that forum, when was the next time you met
3 Sheldon Silver?

4 A. I believe it was within the next couple years, playing
5 golf.

6 Q. And what did you learn when you were playing golf with
7 Sheldon Silver a few years later?

8 I will rephrase it. You look confused.

9 A. Thank you.

10 THE COURT: Yeah, we don't really care how good a
11 golfer he is.

12 THE WITNESS: Not very.

13 THE COURT: Sorry, Mr. Silver.

14 BY MS. COHEN:

15 Q. What did you learn about any mutual friends you had with
16 Sheldon Silver when you played golf with him a couple years
17 after first meeting him?

18 A. That we were connected through Arthur Luxenberg.

19 Q. How did you learn that?

20 A. During our golf, one of his phones rang and it was Arthur
21 Luxenberg. He, Shelly explained that he was playing golf in
22 Buffalo; I assume on the other end asked with who; he said it
23 was me. It sets off a ring and we did not know that there was
24 a mutual connection.

25 Q. After your mutual connection vis-a-vis Arthur Luxenberg to

FBI5sil3

Levy - direct

1 Sheldon Silver, how did your relationship with Sheldon Silver
2 develop?

3 A. We played golf again and I saw him frequently in New York
4 City.

5 Q. Where did you see Sheldon Silver frequently in New York
6 City?

7 A. Either at his law office at Weitz & Luxenberg or at --
8 playing golf or at sporting events.

9 Q. When you saw Sheldon Silver at Weitz & Luxenberg, was this
10 at one of the Weitz & Luxenberg lunches?

11 A. Yes, it could have been.

12 Q. Did you attend lunches at Weitz & Luxenberg?

13 A. Regularly.

14 Q. And did you attend lunches at Weitz & Luxenberg that
15 Sheldon Silver was at?

16 A. Yes.

17 Q. You said you attended sporting events. Did you attend
18 sporting events with Sheldon Silver?

19 A. Yes, we did.

20 Q. Did you socialize with Sheldon Silver?

21 A. Yes, we did.

22 Q. Did you have meals together?

23 A. Many.

24 Q. Did you have his cell phone number?

25 A. I do.

FBI5sil3

Levy - direct

1 Q. What is your cell phone number?

2 A. 716-481-4925.

3 Q. And how did your relationship -- how would you describe the
4 closeness of your relationship with Sheldon Silver?

5 A. I would consider Sheldon Silver a close friend.

6 Q. Did there come a time when Sheldon Silver asked you to
7 invest money for him?

8 A. Yes.

9 Q. When was that?

10 A. Sometime in 2006 or 2007.

11 Q. What did Sheldon Silver say to you?

12 A. He asked me if he could invest in some of my investments.

13 Q. What money did he say he had to invest in your investments?

14 A. We didn't discuss -- we never discussed that.

15 Q. What did he tell you about why he wanted to invest through
16 your investments?

17 A. You know, we have been successful and I think he was
18 interested in investing with us because we had good returns on
19 most of our investments.

20 Q. And what investments did you get Sheldon Silver into in
21 2006?

22 A. The first investment, I believe, was in Clover Communities
23 Fund which is a real estate investment fund that invested in
24 senior housing projects mostly throughout Upstate New York.

25 THE COURT: Clover Communities Fund?

FBI5sil3

Levy - direct

1 THE WITNESS: Clover Communities Fund. Clover, like
2 four-leaf.

3 BY MS. COHEN:

4 Q. How did it come about that you were able to get Sheldon
5 Silver invested in Clover Communities Fund?

6 A. The principal, Michael Joseph, is a close friend and been a
7 business partner of mine for a long time. We were just doing
8 this fund so I thought it would be a good investment for him to
9 be in.

10 Q. When Sheldon Silver first approached you, did he tell you
11 that he had extra money to invest?

12 A. I don't think so. Not -- I don't recall exactly, it is
13 just that he had money to invest.

14 Q. So when he first approached you he told you he had money to
15 invest?

16 A. Correct.

17 Q. And what did he want you to do?

18 A. He asked me what I thought he should invest in.

19 Q. And Clover Communities Fund was the first thing you told
20 Sheldon Silver he should invest in?

21 A. Correct.

22 Q. Is Clover Communities Fund something you picked for Sheldon
23 Silver to invest in?

24 A. Yes, I did.

25 Q. Why did you pick Clover Communities Fund for Sheldon

FBI5sil3

Levy - direct

1 Silver?

2 A. Michael Joseph and Clover is a very solid operator, he has
3 been successful. I thought it would be a good investment for
4 him to be in.

5 Q. What do you mean by a good investment?

6 A. It was fairly safe and a very solid -- very solid returns.

7 Q. What do you mean by solid returns?

8 A. It would be a -- the internal rate of return would be
9 computed, we thought, in the lower to mid 20s which would mean
10 the simple interest rate would be in the mid to upper teens.

11 Q. And when you decided to invest Sheldon Silver in Clover
12 Community Funds, was that fund open or closed?

13 A. At the time of the first investment the fund had been
14 closed.

15 Q. What does it mean when a fund is closed?

16 A. It means it is fully subscribed and documents are
17 completed.

18 Q. So, when a fund is closed can people generally get into the
19 investment anymore?

20 A. No, they cannot.

21 Q. So, how was it that you were able to put Sheldon Silver
22 into Clover Communities Fund when the fund was closed?

23 A. My relationship and influence with the principal, Michael
24 Joseph, allowed me to do that.

25 Q. Do you recall meeting with the government prior to your

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Levy - direct

1 testimony here today?

2 A. Me? Yes.

3 Q. And do you recall when you met with the government that you
4 told the government --

5 MR. SHUR: Objection.

6 THE COURT: Yes. Sustained. Rephrase the question.

7 MS. COHEN: Sure.

8 BY MS. COHEN:

9 Q. What did Sheldon Silver tell you about when he originally
10 approached you and said he had money to invest? What did he
11 tell you about that money?

12 MR. SHUR: Objection. Asked and answered.

13 THE COURT: Overruled.

14 You can answer.

15 A. I'm not -- I'm not sure of the question.

16 Q. If I can show you -- do you remember testifying in the
17 grand jury about this?

18 A. I do.

19 MR. SHUR: Objection, Judge.

20 THE COURT: Overruled. Would you like to come up?

21 MR. SHUR: I would like to come up.

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Levy - direct

1 (At side bar)

2 MS. COHEN: Your Honor, I can simply refresh his
3 recollection with either 3500 material or his grand jury
4 material, whichever one the defense prefers.

5 MR. SHUR: The predicate for refreshing his
6 recollection --

7 THE COURT: He said he didn't remember anything else.

8 MS. COHEN: Correct.

9 MR. SHUR: And what is -- let me see. I haven't seen
10 the passage you highlighted.

11 MS. COHEN: The answer lines 3 to 6.

12 MR. SHUR: There was a question asked -- I don't have
13 the realtime in front of me, obviously, but there was a
14 question asked about what Mr. Silver said and he said he had
15 money to invest. Ms. Cohen asked did he say extra money? And
16 he said no. And now they're trying to --

17 THE COURT: And she is going to ask him was that
18 truthful when you said it. So, he is being impeached with
19 prior testimony.

20 MR. SHUR: I don't think -- Judge --

21 THE COURT: I'm not sure why "extra" is all that
22 critical but.

23 MR. SHUR: The prosecutor opened on it. That's why.

24 What is the actual Q&A, Judge? I apologize. I don't.

25 THE COURT: How far back was that, do you remember?

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Levy - direct

1 MS. COHEN: Probably -- I asked it twice, probably 10
2 questions back, your Honor.

3 The court reporter has it, your Honor.

4 THE COURT: Do you have it handy? I was thinking I
5 could have it quicker. The question was:

6 "Q When Sheldon Silver first approached you, did he tell you
7 that he had extra money to invest?

8 "A I don't think so. Not -- I don't recall exactly, it is
9 just that he had money to invest."

10 MR. SHUR: Okay.

11 MS. COHEN: Your Honor, I'm happy to first refresh his
12 recollection and then to impeach it or do it either way.

13 THE COURT: Okay.
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Levy - direct

1 (In open court)

2 BY MS. COHEN:

3 Q. Mr. Levy do you recall testifying in the grand jury in this
4 matter?

5 A. Yes, I do.

6 MS. COHEN: Your Honor, with your permission, I am
7 going to show Mr. Levy his grand jury testimony directing his
8 attention to page 6, lines 7 through 15, it's 3500 3562-04.

9 Q. I just ask if that refreshes your recollection about what
10 Sheldon Silver told you about the money he had to -- for the
11 initial investment.

12 A. I assume you are referring to the highlighted section here?

13 Q. Yes.

14 A. Okay.

15 THE COURT: The question is does that refresh your
16 recollection about what Mr. Silver told you before the first
17 investment.

18 THE WITNESS: Yes.

19 Q. So, having read that, do you recall Sheldon Silver told you
20 that he had some extra cash that he wanted to invest?

21 A. Extra money, correct.

22 Q. You can set that aside.

23 So, just to be clear, when Sheldon Silver told you he
24 initially had some money he wanted you to invest, he said he
25 had some extra money he wanted you to invest?

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Levy - direct

1 A. That's the term that I used, correct.

2 Q. And you said you picked Clover Communities Fund for Sheldon
3 Silver's initial investment and the fund was closed at the
4 time?

5 A. Yes.

6 Q. And how did you go about getting Sheldon Silver invested
7 into Clover Communities Fund if the fund was closed?

8 A. Well, what I did with the principal, Michael Joseph, is we
9 each took \$50,000 of our own commitment and carved it out so
10 that he would have an opportunity to come in as a nominee under
11 our investments.

12 Q. Explain for the jury what a nominee is.

13 A. A nominee is just an individual who is not a direct
14 investor but an investor through someone else or some other
15 entity. They still have all of the investment opportunity and
16 the investment benefits, but they're not actually listed as a
17 direct investor.

18 Q. And when someone is, in this case, you decided to assign,
19 you said, \$50,000 of whose investment to Sheldon Silver?

20 A. \$50,000 of my investment commitment and \$50,000 of Mike
21 Joseph's investment commitment.

22 Q. And what relationship did Michael Joseph have with Sheldon
23 Silver at the time?

24 A. He had none.

25 Q. Why did Michael Joseph assign \$50,000 of his investment to

FBI5sil3

Levy - direct

1 Sheldon Silver?

2 A. Because I asked him to.

3 THE COURT: Ms. Cohen, you are saying "his
4 investment." You are saying "his investment commitment."

5 THE WITNESS: It was a commitment and at that point no
6 investments had been made, it was just a commitment. When you
7 commit to a fund it is called over a period of time.

8 BY MS. COHEN:

9 Q. What does it mean to commit to a fund and it is called over
10 a period of time? Explain that to the jury.

11 A. In this case he committed \$100,000 to this investment.

12 THE COURT: He, being Mr. Silver?

13 A. Mr. Speaker, yes, Sheldon Silver, committed \$100,000 to
14 this investment. The fund was raising \$10 million and over a
15 period of a number of years it would call the capital so that
16 it would use it to build the housing projects that it was
17 building.

18 Q. And because you committed \$50,000 of your own investment
19 and Michael Joseph committed \$50,000 of his investment and gave
20 that commitment to Sheldon Silver, neither you nor Mr. Joseph
21 would receive any profit based on that total amount of
22 \$100,000, any profit would be to Sheldon Silver as nominee?

23 MR. SHUR: Objection.

24 THE COURT: Sustained.

25 Q. How does it work regarding profit when you assign the --

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Levy - direct

1 THE COURT: You can't talk over each other.

2 Q. Who gets the profit when someone is a nominee?

3 A. It is no different than in the direct investment. It is
4 the same. The profit is distributed identically to whether you
5 are named or a nominee investor. When there is any profit or
6 losses attributable to the investment they're directly passed
7 through to the investor.

8 THE COURT: Do I understand correctly that basically
9 what happened is you and Mr. Joseph both reduced, by \$50,000,
10 the amount of money you invested and instead Mr. Silver
11 invested that \$100,000?

12 THE WITNESS: Committed and then ultimately invested,
13 correct.

14 THE COURT: Once it got called?

15 THE WITNESS: Correct. So, yes.

16 BY MS. COHEN:

17 Q. How profitable is Clover Communities Fund I?

18 A. I don't have the exact numbers but we were projecting that
19 the fund -- and I would deliver a return, simple interest in
20 low, 13, 14, 15 percent with a computed internal rate of return
21 in the low to mid 20s.

22 Q. And what does that mean for the investor? Is that a good
23 investment? What type of investment is it?

24 A. That would be a very good investment.

25 Q. And is Clover Communities Fund something that's available

FBI5sil3

Levy - direct

1 to the general public?

2 A. No, it is not.

3 Q. How is it that one is able to invest in Clover Communities
4 Fund?

5 A. Well, either they are associated in some way with the
6 manager, Michael Joseph, or one of his business partners or
7 friends that advises someone that they might want to consider
8 looking at this investment.

9 Q. And after you gave Sheldon Silver a part of your committed
10 investment in Clover Communities Fund I, what other investments
11 did you get Sheldon Silver access to?

12 A. Over time?

13 Q. Yes.

14 A. Well, there was some investments in Counsel Financial
15 Services which I recommended that Sheldon Silver go into.
16 There was investment in a satellite company in Australia that's
17 actually publicly traded that I recommended that he go into.
18 There is an early stage venture capital firm here in New York
19 that I recommended that he go into. There is a company that I
20 serve as chairman of that's currently publicly traded that
21 delivers service as a provider of portals and premium content
22 to telephone companies and cable companies, in essence a
23 version of Yahoo or MSN for those companies, that I
24 recommended. And, there was a hedge fund in Dallas, Texas that
25 we are invested in that he came into with us as well.

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Levy - direct

1 Q. We will go through each one of those investments. I assume
2 they had all had different names?

3 A. Correct.

4 Q. In general, after Sheldon Silver first came to you in 2006
5 and told you he had extra money to invest and you invested him
6 in Clover Communities Fund I, how did it come about that you
7 got him invested in other investments that you had access to?

8 A. Most typically I would go to him and tell him that I had
9 something that I thought would be good for him to invest in.

10 Q. Were there times when Sheldon Silver came to you and said
11 he had some more money that he wanted you to invest?

12 A. Likely possibly, yes.

13 Q. And when Sheldon Silver either told you he had more money
14 that he wanted you to invest or you went to him to tell him
15 about an investment opportunity, what did Sheldon Silver tell
16 you about how he had the money that was available for you to
17 invest?

18 A. I never asked.

19 Q. Whether you asked or not, what did Sheldon Silver tell you
20 about how he had the money available for you to invest?

21 MR. SHUR: Objection.

22 THE COURT: Overruled.

23 A. He did not.

24 Q. He did not tell you anything?

25 A. Correct.

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Levy - direct

1 Q. When you were discussing Clover Communities Fund I, were
2 there additional Clover Communities Funds that you invested
3 Sheldon Silver's money in for him?

4 A. Yes; there was fund II, fund III, and direct investment in
5 a project.

6 Q. And were the other Clover Communities Fund as profitable as
7 the first fund?

8 A. Remains to be seen but we hope so.

9 Q. And are the other Clover Communities Funds, were they open
10 to the public to invest in?

11 A. They are not.

12 Q. And, in general, how did the mechanics work of getting
13 documents to and from Sheldon Silver related to the
14 investments?

15 A. Generally my staff would handle all the paperwork and
16 documentation and work directly with Sheldon Silver or his
17 accountants on these investments.

18 Q. When you say your staff, your staff of what company?

19 A. My staff of JoRon or our venture fund.

20 Q. And if you look in your binder, actually at the first
21 document which is marked Government Exhibit 1012 for
22 identification and 1012-2 for identification?

23 You mentioned Counsel Financial, is Counsel Financial
24 an investment that you got Sheldon Silver access to?

25 A. Yes, I did.

FBI5sil3

Levy - direct

1 Q. And did Perry Weitz or Arthur Luxenberg have any role in
2 getting Sheldon Silver invested into Counsel Financial?

3 A. They had -- they had no role.

4 Q. So, if you can look in your binder at Government Exhibit
5 1012 and 1012-2 and if you recognize them, what are they?

6 A. Yes, I do.

7 Q. What are these documents marked for identification
8 Government Exhibit 1012 and 1012-2?

9 A. These are -- this is correspondence between Shelly and us
10 about the particular initial investments in Counsel Financial
11 Services.

12 MS. COHEN: Your Honor, the government moves
13 Government's Exhibits 1012 and 1012-2, that are also the
14 subject of a proposed stipulation that we can read into the
15 record, from JoRon Management.

16 MR. SHUR: No objection.

17 THE COURT: So 1012 and 1012-2 are received.

18 (Government's Exhibits 1012 and 1012-2 received in
19 evidence)

20 BY MS. COHEN:

21 Q. If we can put up Government Exhibit 1012, please.

22 Mr. Levy, what is Government Exhibit 1012?

23 A. It is a letter from me to Shelly acknowledging his
24 investment and the interest and the return on the investment.

25 THE COURT: 1012, wrong document.

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Levy - direct

1 THE WITNESS: Oh, I'm sorry. What am I on? Oh, I
2 see. I apologize.

3 A. This is a letter from him acknowledging that he was sending
4 a check for \$75,000.

5 Q. And this is Sheldon Silver's letter to you sending a check
6 for \$75,000 to invest in Counsel Financial Services, correct?

7 A. Correct.

8 Q. And the second page of Government Exhibit 1012, what is
9 that?

10 A. A copy of a deposit slip and a copy of his check.

11 Q. And why is Sheldon Silver's check written out to JoRon
12 Management rather than directly to Counsel Financial?

13 A. I would only have a guess, it is because we must have -- we
14 wrote the check for him and he gave us the check and we must
15 have made the deposit for him.

16 Q. And JoRon is the management company you owned with Ron
17 Schreiber?

18 A. Correct.

19 Q. If you look at Government Exhibit 1012 please?

20 THE COURT: 1012-2 you mean.

21 Q. Dash 2. Sorry, your Honor.

22 A. Yes.

23 Q. What is 1012-2?

24 A. That is a letter from me to Shelly acknowledging that the
25 check was deposited and that he would be receiving, effective

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Levy - direct

1 March 29, 2007, an interest rate of 11 percent over a
2 three-year term.

3 Q. Do you recall when you first got Sheldon Silver access to
4 Counsel Financial, was there a minimum amount investment
5 required for Counsel Financial?

6 A. Typically \$250,000.

7 Q. How was Sheldon Silver able to invest \$75,000 as his first
8 investment if the minimum was typically \$250,000?

9 A. Because I made those arrangements.

10 Q. Looking at -- actually, let's talk about the other
11 investments you got Sheldon Silver access to. You described
12 them but let's try to put a name on them and try to tell the
13 jury a little bit more about what they are.

14 What is Alpha Orbit?

15 A. Alpha Orbit is an LLC -- limited liability company -- that
16 we established to invest in a hedge fund in Dallas, Texas.

17 Q. When you say "we" you are referring to yourself and Ron
18 Schreiber?

19 A. It is a group of investors that we assembled to invest in
20 this particular investment.

21 Q. And about how much was each individual's individual
22 investment in Alpha Orbit?

23 A. Everybody's was different. We invested \$5.2 million.

24 Q. How did it come about that -- was Sheldon Silver one of the
25 investors in Alpha Orbit?

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Levy - direct

1 A. Yes, he was.

2 Q. How did it come about that Sheldon Silver was able to
3 become an investor in Alpha Orbit?

4 A. He mentioned to me that Arthur Luxenberg had told him about
5 the investment and he asked me whether it is something that I
6 thought he should do.

7 Q. And what did you did tell Sheldon Silver about whether he
8 should invest in Alpha Orbit?

9 A. I told him that he should but it is a little riskier than
10 most.

11 Q. And did Sheldon Silver invest in Alpha Orbit?

12 A. He did.

13 Q. And is Alpha Orbit an investment that was open to the
14 public to invest in?

15 A. No, it was not.

16 Q. What is Lerer Venture? L-E-R-E-R.

17 A. Lerer Venture is an early stage venture capital fund here
18 in New York City.

19 Q. What do you mean by an early stage venture capital fund?

20 A. They invest in companies before most of us would hear of
21 them, before their revenue at the early stage, business plan,
22 or at early inception of their evolution of a business.

23 Q. What is your involvement in Lerer Ventures?

24 A. I co-invest with Lerer Ventures in a number of deals and
25 the principals are close friends.

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Levy - direct

1 Q. Is Sheldon Silver one of the investors in Lerer Ventures?

2 A. He is.

3 Q. How did it come about to Sheldon Silver was able to invest
4 in Lerer Ventures?

5 A. We were going to invest and I asked him if he would like to
6 participate.

7 Q. What did Sheldon Silver say when you asked him if he wanted
8 to participate in an Lerer Ventures?

9 A. If I thought it was something he should do, he would.

10 Q. Did Sheldon Silver invest in Lerer Ventures?

11 A. Yes, he did.

12 Q. Is Lerer Ventures something that is open to the general
13 public?

14 A. It is not.

15 Q. And if you can look in your binder at Government Exhibit
16 1024 for identification, it relates to Lerer Ventures. If you
17 recognize that document, what is it?

18 A. That is a letter that I sent to Shelly acknowledging his
19 investment in Lerer Ventures of \$25,000.

20 MS. COHEN: Your Honor, the government moves, pursuant
21 to the stipulation, Government Exhibit 1024.

22 MR. SHUR: No objection.

23 THE COURT: 1024 is received.

24 (Government's Exhibit 1024 received in evidence)

25 BY MS. COHEN:

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Levy - direct

1 Q. Mr. Levy, is JoRon Management, is that your company with
2 Ron Schreiber?

3 A. Yes, it is.

4 Q. Is this the letter to Sheldon Silver about his \$25,000
5 investment in Lerer Ventures that you got him access to?

6 A. Yes, it is.

7 Q. What is NewSat?

8 A. It's a satellite company in Melbourne, Australia.

9 Q. What do you mean by a satellite company?

10 A. They are building a satellite that will be up in the sky in
11 2017.

12 THE COURT: I'm sorry. The name of the company is
13 NewSat?

14 THE WITNESS: N-E-W-S-A -- I think it is S-A-T.

15 THE COURT: S-A-T.

16 THE WITNESS: Yes; S-A-T, new satellite.

17 THE COURT: Okay.

18 BY MS. COHEN:

19 Q. Are you an investor in NewSat?

20 A. I am.

21 Q. And is NewSat another investment that you got Sheldon
22 Silver access to as an investor?

23 A. Yes, I did.

24 Q. And what is Synacor?

25 A. Synacor is a company that develops -- builds portals and

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Levy - direct

1 premium content products for telephone companies and cable
2 companies.

3 THE COURT: How do you spell Synacor?

4 THE WITNESS: S-Y-N-A-C-O-R.

5 BY MS. COHEN:

6 Q. Is Synacor a company that you have invested in?

7 A. Yes.

8 Q. And what are portals?

9 A. MSN, Yahoo, AOL; those are portals.

10 Q. Is Synacor an investment that you were able to get Sheldon
11 Silver invested into?

12 A. Yes, I was.

13 Q. And Synacor, you said, is now a publicly traded company?

14 A. That's correct.

15 Q. At the time you got Sheldon Silver invested into Synacor,
16 was it publicly traded?

17 A. It was not.

18 Q. So, at the time you got Sheldon Silver invested into
19 Synacor it was not available to the general public?

20 A. That's correct.

21 Q. And for all these investment opportunities that you gave
22 Sheldon Silver access to what fee, if any, did you charge
23 Sheldon Silver for advising him about these investments?

24 A. Nothing ever.

25 Q. What fee, if any, did you charge Sheldon Silver for helping

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Levy - direct

1 him get access to these investments?

2 A. Nothing.

3 Q. What fee did JoRon charge Sheldon Silver for doing all the
4 paperwork related to these investments?

5 A. Nothing.

6 Q. In general, what type of investors in these investments --
7 withdrawn, your Honor.

8 In addition to Sheldon Silver you have introduced
9 other investors to these investments that we have just talked
10 about?

11 A. Correct.

12 Q. And what type of investors have you introduced, in general,
13 to these investments we have just talked about?

14 A. Almost, most all are friends.

15 Q. And they are friends. Are they friends -- do they have any
16 particular net worth?

17 A. I guess you would classify them as high net worth.

18 Q. What documents did JoRon prepare for Sheldon Silver related
19 to all the investments we just talked about that you gave
20 Sheldon Silver access to each year?

21 A. Well, if you are referring to annually, we would prepare
22 for him a schedule, a listing of all of his investments and our
23 estimation of what we thought those investments were valued at.
24 We would prepare that for him on an annual basis at his request
25 for his public filing.

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Levy - direct

1 Q. When you say his public filing, what are you referring to?

2 A. His responsibility as an elected official he had to file on
3 an annual basis and disclose all of his investments.

4 Q. If you look at what's been marked for identification
5 Government Exhibit 1051 and if you recognize it, what is that?

6 A. That is a schedule that we prepared for him, obviously at
7 the end of April 2014, of the current value of all of the
8 investments that he had done that we were involved in with him.

9 Q. When you say "we" you are talking about JoRon?

10 A. JoRon, and/or myself personally.

11 Q. And the investments that even were made for JoRon were ones
12 that you personally got Sheldon Silver access to?

13 A. Correct.

14 MS. COHEN: The government moves, pursuant to the
15 stipulation, Government Exhibit 1051 into evidence.

16 MR. SHUR: No objection.

17 THE COURT: 1051 is received.

18 (Government's Exhibit 1051 received in evidence)

19 BY MS. COHEN:

20 Q. Mr. Levy, can you please explain for the jury what is shown
21 here going through each of the investments?

22 A. Well, it's a schedule of each of the individual investments
23 and the current value of those investments as of the date that
24 this was prepared for him.

25 Q. You see on, all of the investment except for Counsel

FBI5sil3

Levy - direct

1 Financial, it has a paren where it says "JoRon nominee," or in
2 two cases "MJ nominee." Can you explain for the jury what that
3 means?

4 A. That means that the investment was done still under the
5 name, under a different name, probably under the name JoRon
6 although it could be different in each case but probably not,
7 and that what we did was we gave Shelly a nominee letter saying
8 he had the investment but wasn't a direct investor into the
9 deal.

10 Q. Who is MJ? You talk about JoRon, who is MJ?

11 A. Michael Joseph.

12 Q. Michael Joseph was your partner in Clover Communities Fund
13 and other investments?

14 A. He is the manager of Clover Communities Fund, yes.

15 Q. If you can walk us through the investments, what is Alpha
16 Orbit? What is that there?

17 A. He had an investment of \$25,000 as part of, as I said, that
18 \$5.2 million investment we made.

19 Q. \$5.2 total investment?

20 A. Our investment was \$5.2 million, correct.

21 Q. And you gave Sheldon Silver \$25,000 of your investment?

22 A. Well, we had a number of investors but, yes, he invested
23 \$25,000.

24 Q. And Clover Communities Fund I, what is shown there?

25 A. That's the first fund where, again, we -- Michael Joseph

FBI5sil3

Levy - direct

1 and I -- made him a nominee and the level of \$50,000 is
2 \$59,009.79 and \$49,009.40, and he was a nominee in that
3 investment.

4 Q. And Clover Communities Fund II, what is shown there?

5 A. \$99,122.16; a nominee for us that he made under our
6 investment.

7 Q. And Clover Communities Fund III?

8 A. That's \$8,375.36 and that's what had been called to date
9 for his commitment in Clover Communities Fund III, again, as a
10 nominee.

11 Q. What do you mean "called to date?"

12 A. Well, as I explained before, we only call capital as the
13 projects are going to be developed and until such time as this
14 occurred we -- he had only drawn down -- \$8,375.36 had been
15 called of his commitment to that investment.

16 Q. And what is Clover-Brighton Square, MJ nominee?

17 A. Brighton Square, a project in Tonawanda, New York, that's a
18 building -- a senior housing project that didn't go through the
19 fund, it was a direct investment that we made, again, into this
20 project.

21 Q. And the \$50,000 there, is that \$50,000 of Sheldon Silver's
22 money that you were able to invest for him in Clover?

23 A. In this case it was Michael Joseph. He was a nominee under
24 Michael's investment.

25 Q. It was an investment that you gave Sheldon Silver access

FBI5sil3

Levy - direct

1 to?

2 A. I arranged, yes.

3 Q. What is Lerer Ventures II? Is that the same as Lerer
4 Ventures we talked about?

5 A. Correct.

6 Q. What is shown here under Lerer ventures II?

7 A. Again, we made an investment of \$250,000 and we made
8 arrangements for Shelly to put in \$25,000. I'm guessing that
9 this says that only \$23,000 has been called.

10 Q. So the amounts called here, the actual investment is
11 larger?

12 A. The commitment could be larger.

13 Q. And under NewSat, what is that? Is that the NewSat we
14 talked about, the satellite?

15 A. That investment was made.

16 What took place is NewSat is a publicly traded company
17 on the Australian stock exchange and this -- where we actually
18 participated in a private placement to have the company assist
19 in raising the capital necessary to build the satellite.

20 Q. Is NewSat one of the investments you said you gave Sheldon
21 Silver access to before it became a publicly traded company?

22 A. No. It was a publicly traded company at the time. This
23 was a -- what often will take place is companies need to raise
24 additional capital to improve their balance sheet, they need
25 capital in order to go an invest in factories, machinery,

FBI5sil3

Levy - direct

1 equipment, in this case building a satellite which is a
2 \$600 million investment for the company. They needed a
3 combination of equity -- capital -- plus debt to build the
4 satellite so they did a private placement to put additional
5 capital on their balance sheet. We participated in this and so
6 this was cash capital that was actually invested; a publicly
7 traded company where we received a security.

8 Q. And Counsel Financial, what is shown here about the total
9 value of Sheldon Silver's investment in Counsel Financial?

10 A. I would guess this is a total invested capital plus
11 interest accrued.

12 Q. And the total amount is \$1.3 million?

13 A. That's correct.

14 Q. So what does it show here for the total amount of
15 investments that Sheldon Silver has through the different
16 investments listed here that you got Sheldon Silver access to?

17 A. \$1,655,000.

18 Q. What did you know about how Sheldon Silver came to have the
19 money that he gave you to make all of these investments listed
20 on Government Exhibit 1051?

21 MR. SHUR: Objection. Asked and answered.

22 THE COURT: Overruled.

23 A. I didn't know anything.

24 Q. Did there come a time when Sheldon Silver asked you to put
25 some of his investment in Counsel Financial in the name of

FBI5sil3

Levy - direct

1 another person?

2 A. Yes.

3 Q. What person did Sheldon Silver ask you to put his Counsel
4 Financial investment in the name of?

5 A. His wife Rosa.

6 Q. What did Sheldon Silver tell you about why he wanted to
7 split his Counsel Financial investment between himself and his
8 wife Rosa?

9 A. It would allow him to not have to disclose in his annual
10 statements, his documents, his filings, that particular piece
11 of his investment that he had been previously disclosing.

12 Q. What piece of investment would -- how would dividing his
13 investment -- withdrawn.

14 How did Sheldon Silver want to divide his investment
15 in Counsel Financial?

16 A. He just split -- it was \$600,000 split equally, \$300,000 in
17 Rosa's name and 300,000 remaining in his name.

18 Q. What disclosure did you understand Sheldon Silver was
19 referring to when he said he wanted to split the note in order
20 to avoid to disclose the note under his name?

21 A. His financial filing as an elected official.

22 Q. What state boards did you sit on during the time that
23 Sheldon Silver, that you were giving Sheldon Silver access to
24 private investment opportunities?

25 A. I served on the Erie Canal Harbor Development Corporation.

FBI5sil3

Levy - direct

1 Q. What is the Erie Canal Harbor Development Corporation?

2 A. It is a state authority that was put in place that was
3 responsible for rebuilding the waterfront in Buffalo, New York.

4 Q. And when the Erie Canal Harbor Development Corporation
5 wanted to do projects, was there any other state entity that
6 had to approve those projects?

7 A. Different state entities we draw funding from.

8 Q. Was something called the Public Authority Control Board --
9 or the PACB -- one of the entities that had to approve certain
10 types of funding for projects the Erie Canal Harbor Development
11 Corp wanted to do?

12 A. On occasion, yes.

13 Q. And when did you serve as chair of the Erie Canal Harbor
14 Development Corp?

15 A. I believe I was appointed in 2007 and I served for almost
16 five years, total.

17 Q. Who appointed you to the Erie Canal Harbor Development
18 Corp?

19 A. Governor Eliot Spitzer.

20 Q. And was Sheldon Silver a voting member on the PACB when you
21 were chair of the Erie Canal Harbor Development Corp?

22 A. Yes, he was.

23 Q. When you were a chair of the Erie Canal Harbor Development
24 Corporation, did you discuss with Sheldon Silver projects the
25 Erie Canal Harbor Development Corp wanted to do that were going

FBI5sil3

Levy - direct

1 to be put before the PACB for approval?

2 A. On occasion, yes.

3 Q. Did Sheldon Silver tell you that he would be supportive of
4 those projects when they came up for a vote at the Public
5 Authority Control Board?

6 A. Yes, he did.

7 THE COURT: Ladies and gentlemen, that evidence just
8 now about the Erie County Control Board or the PACB, there is
9 no suggestion that there was anything untoward about those
10 projects. That evidence was admitted solely for purposes of
11 you evaluating Mr. Silver's connection to the PACB.

12 Ms. Cohen.

13 BY MS. COHEN:

14 Q. Mr. Levy, you testified earlier that over the years you
15 developed a close friendship with Sheldon Silver. Do you
16 recall that testimony?

17 A. Yes, I do.

18 Q. About how often did you talk to Sheldon Silver?

19 A. At different points of the year I would talk to him
20 multiple times a week.

21 Q. When, if at all, did Sheldon Silver mention the name
22 Dr. Robert Taub to you?

23 A. He never mentioned the name Dr. Taub.

24 THE COURT: You have to speak up, Mr. Levy.

25 THE WITNESS: He never mentioned the name.

FBI5sil3

Levy - direct

1 BY MS. COHEN:

2 Q. Other than in connection with this case have you ever heard
3 the name Dr. Taub?

4 A. I have not.

5 Q. When, if at all, did Sheldon Silver mention the name Jay
6 Goldberg to you?

7 A. He did not.

8 Q. Other than in connection with this case, have you ever
9 heard of Jay Goldberg?

10 A. I have not.

11 Q. When, if at all, did Sheldon Silver tell you that the money
12 he was giving you to invest he was getting through referral of
13 asbestos cases to him at Weitz & Luxenberg?

14 A. We never discussed that.

15 Q. Whether you ever discussed it or not, what did Sheldon
16 Silver tell you about whether any of the money he was giving
17 you came from referral of asbestos cases --

18 A. Nothing ever.

19 Q. -- to him at Weitz & Luxenberg?

20 A. Nothing ever.

21 Q. What did Sheldon Silver tell you about if any of the money
22 he was giving you came from tax certiorari work from real
23 estate developers that he directed to a law firm?

24 A. Nothing. Ever.

25 MS. COHEN: A moment to confer, your Honor?

FBI5sil3

Levy - cross

1 THE COURT: Sure.

2 MS. COHEN: Nothing further, your Honor.

3 THE COURT: Okay.

4 Mr. Shur?

5 CROSS EXAMINATION

6 BY MR. SHUR:

7 Q. Good afternoon. My name is Justin Shur. I represent
8 Mr. Silver along with my colleagues.

9 We have never met before, right?

10 A. Correct.

11 Q. And I apologize, is it Mr. Levy or Mr. Levy?

12 A. It is Levy.

13 Q. Levy. Thank you.

14 Mr. Levy, you and Mr. Silver are friends, right?

15 A. Yes, sir.

16 Q. I think you said you first met Mr. Silver at an event in
17 Buffalo, New York?

18 A. Correct.

19 Q. And this was a forum put on by SUNY Buffalo?

20 A. Correct.

21 Q. And that's your alma mater?

22 A. Correct.

23 Q. And the forum was for community leaders and business
24 leaders to get together?

25 A. Correct.

FBI5sil3

Levy - cross

1 Q. For these folks to discuss opportunities to strengthen the
2 local economy?

3 A. A hundred percent.

4 Q. And that's where you met Mr. Silver?

5 A. Yes.

6 Q. And fair to say you struck up a relationship with
7 Mr. Silver?

8 A. I believe so.

9 Q. And from there on, after this event in Buffalo, you
10 developed a friendship, right?

11 A. Absolutely.

12 Q. You and Mr. Silver played golf together, right?

13 A. Correct.

14 Q. And as friends you and Mr. Silver went to hockey games
15 together; is that right?

16 A. That's correct.

17 Q. You and Mr. Silver went to Sabres games together in
18 Buffalo?

19 A. Yes.

20 Q. And you and Mr. Silver went to Rangers games here in New
21 York City at Madison Square Garden?

22 A. Many.

23 Q. Mr. Silver is a big Rangers fan?

24 A. Very big.

25 Q. We won't hold that against him.

FBI5sil3

Levy - cross

1 So, as a friend you helped work on Mr. Silver's
2 campaign?

3 A. Yes, I did.

4 Q. He didn't pay you for that work, did he?

5 A. Absolutely not.

6 Q. You volunteered to help, right?

7 A. That's correct.

8 Q. Because he was your friend, right?

9 A. That's correct.

10 Q. Mr. Levy, while you and Mr. Silver were friends, did he
11 ever introduce you to his family?

12 A. Yes.

13 Q. And did he invite you over to his home?

14 A. Yes.

15 Q. Have you been to his home here in Manhattan?

16 A. Yes, I have.

17 Q. And what about in Upstate New York?

18 A. No, I have not.

19 Q. Fair to say Mr. Silver is low key?

20 A. Yes.

21 Q. He is not a loud and boisterous person, right?

22 A. That's for sure.

23 Q. And can be a man of few words, isn't that right?

24 A. Correct.

25 Q. He didn't share all the details of his life with you,

FBI5sil3

Levy - cross

1 right?

2 A. No, he did not.

3 Q. And that was true with respect to both his personal life
4 and his professional life, right?

5 A. Correct.

6 Q. And would you agree that sometimes Mr. Silver could be hard
7 to read?

8 A. Definitely.

9 Q. I want to talk about -- so Mr. Silver, as I understand it
10 from your direct examination, at some point in time told you he
11 was looking to invest money?

12 A. Yes.

13 Q. And I believe -- do you remember the prosecutor asked you
14 that question and showed you your grand jury testimony and it
15 said it was extra money, right, and she said extra cash and you
16 said extra money? Do you remember that exchange?

17 A. Yes, I do.

18 Q. Mr. Silver asked -- said he was looking to invest money,
19 right?

20 A. Correct.

21 Q. And when you have money to invest in some project or some
22 proposal it's extra money, right?

23 A. Can be.

24 Q. Right, it is not money that is tied up somewhere, right?

25 A. Correct.

FBI5sil3

Levy - cross

1 Q. It is money that is available?

2 A. Correct.

3 Q. And that's true for other people that have asked for your
4 assistance in making investments, right?

5 A. Correct.

6 Q. And fair to say that you would often learn of different
7 investment opportunities over time?

8 A. Yes.

9 Q. And on occasion you would invite Mr. Silver to participate
10 in a particular investment?

11 A. Correct.

12 Q. And if you learned of an investment that you thought would
13 be a good fit you would tell Mr. Silver about it, right?

14 A. Yes.

15 Q. The investments that the prosecutor asked you about you
16 said were good investments, right?

17 A. Correct.

18 Q. Mr. Silver was a friend. You wouldn't recommend a bad
19 investment to him, would you?

20 A. I would not.

21 THE COURT: I assume you try not to make bad
22 investments.

23 A. It just comes with the territory, Judge.

24 THE COURT: Some are better than others.

25 BY MR. SHUR:

FBI5s1l3

Levy - cross

1 Q. And these various investment opportunities that the
2 prosecutor asked you about, this was over the course of a span
3 of time, right?

4 A. Many years.

5 Q. And on occasion you would go to Mr. Silver and tell him
6 about some investment opportunity, right?

7 A. Yes.

8 Q. And you would invite him to participate?

9 A. Correct.

10 Q. And sometimes he would?

11 A. Correct.

12 Q. And sometimes he didn't?

13 A. Correct.

14 Q. Fair to say that with the investments that you discussed on
15 direct examination, the people involved in those investments
16 often knew one another?

17 A. Not always.

18 Q. Okay. Well, we will walk through sort of each one and I
19 will ask you about them.

20 Counsel Financial was one of the investments that you
21 are recommended to Mr. Silver, right?

22 A. Correct.

23 Q. And you had invited other friends and family members to
24 participate in Counsel Financial?

25 A. Several.

FBI5sil3

Levy - cross

1 Q. And NewSat was another investment that you invited
2 Mr. Silver to participate in, right?

3 A. Yes.

4 Q. And you had put together a group to invest in NewSat? Is
5 that right?

6 A. Yes, we did.

7 Q. And that group included Mr. Silver, right?

8 A. Yes.

9 Q. And included other people that you knew?

10 A. Yes.

11 Q. And Alpha Orbit was another investment that the prosecutor
12 asked you about. Do you remember that?

13 A. Correct.

14 Q. And to be clear, Alpha Orbit is not a hedge fund itself,
15 right?

16 A. Correct.

17 Q. It is a limited liability company --

18 A. Correct.

19 Q. -- that you established, right?

20 A. Correct.

21 Q. For the purposes of making an investment into a hedge fund?

22 A. Actually into the management company that runs the hedge
23 fund.

24 Q. I see. Okay.

25 And you know Arthur Luxenberg, right?

FBI5sil3

Levy - cross

1 A. Yes.

2 Q. He is one of the founders of the Weitz & Luxenberg law
3 firm?

4 A. Correct.

5 Q. And he is a partner of yours in investments?

6 A. Yes.

7 Q. And I believe you testified that it was Mr. Luxenberg that
8 told Mr. Silver about the Alpha Orbit investment?

9 A. Yes.

10 Q. And that Mr. Silver then came to you and asked you what you
11 thought about it?

12 A. Correct.

13 Q. And you told him, right?

14 A. I told him it was -- yes.

15 Q. You told him what you thought about the investment, right?

16 A. Correct.

17 Q. And that it was Mr. Silver's decision as to whether or not
18 he would invest?

19 A. And how much.

20 Q. Okay.

21 And Synacor was another investment that the prosecutor
22 asked you about; is it a media company? Did I understand that
23 correctly?

24 A. Not really.

25 Q. What type of company is Synacor?

FBI5sil3

Levy - cross

1 A. It is a company that runs portals and premium content
2 services for telephone companies and cable companies.

3 Q. I see. Okay.

4 And I believe you said that the other investments were
5 most -- all of them were mostly -- they were friends of yours?

6 A. In Synacor's case?

7 Q. Yes.

8 A. Could have been institutional investors as well.

9 Q. Okay.

10 A. I'm the chairman of the company.

11 Q. Okay.

12 One of the investments Ms. Cohen asked you about was
13 the Clover Communities Fund?

14 A. Correct.

15 Q. And the money raised through that fund is used to build
16 homes. Did I understand that correct?

17 A. Senior housing.

18 Q. Senior housing?

19 A. Apartments.

20 Q. And this is generally sort of in the northeast part of the
21 country?

22 A. Correct.

23 Q. So these are housing for folks who have retired?

24 A. Generally, yes.

25 Q. But who don't want to move down to Florida?

FBI5sil3

Levy - cross

1 MS. COHEN: Objection.

2 THE COURT: Overruled.

3 A. These are for -- people I think technically have to be over
4 60 years old to live in these and these are mostly people
5 living in places like Buffalo and Rochester and Syracuse that
6 don't want to leave, want to stay and live in a nice apartment.

7 Q. And stay close to their families?

8 A. Correct.

9 Q. And in your view is this a worthy investment?

10 THE COURT: I don't know what that means.

11 Q. I will withdraw the question.

12 You also mentioned, is it Lerer Ventures?

13 A. Correct.

14 Q. And if I understood you correctly, it provides early stage
15 seed money?

16 A. It is a venture fund that invested in early stage
17 technology companies.

18 Q. So it provides money to businesses that are basically just
19 getting off the ground?

20 A. Very high risk, yes.

21 Q. Those businesses don't have the capital to grow on their
22 own; is that fair?

23 A. Correct.

24 Q. So they look for investors, right?

25 A. Yes.

FBI5sil3

Levy - cross

1 Q. Such as yourself?

2 A. Correct.

3 Q. Okay. Mr. Levy, the prosecutor --

4 THE COURT: Levy.

5 Q. I'm sorry, Levy. Thank you, Judge.

6 And I apologize, sir.

7 A. Perfectly okay.

8 Q. Mr. Levy, the prosecutor asked you if you knew the source
9 of Mr. Silver's money. Do you remember that?

10 A. Yes.

11 Q. And you said -- you said you didn't ask him, right?

12 A. Correct.

13 Q. You didn't know, right?

14 A. That's correct.

15 Q. Okay.

16 It is not as if you asked him and he refused to tell
17 you, correct?

18 A. Correct.

19 Q. And fair to say that it wasn't unusual for you to ask a
20 friend where they got their money?

21 A. Correct.

22 THE COURT: Is that what you mean?

23 MS. COHEN: Object, your Honor.

24 Q. You have other friends who have invested in some of these
25 vehicles that we have talked about, right?

FBI5sil3

Levy - cross

1 A. Correct.

2 Q. Do you ask them where they got their money from?

3 A. I did not.

4 Q. Did they volunteer to you where they got their money from?

5 A. Not that I know of.

6 Q. Okay.

7 But Mr. Silver was a friend, right?

8 A. Correct.

9 Q. And you knew he was a lawyer at Weitz & Luxenberg, right?

10 A. Correct.

11 Q. A successful law firm?

12 A. Correct.

13 Q. And you knew that he brought cases into the firm, right?

14 A. I think so.

15 THE COURT: Are you just speculating?

16 THE WITNESS: I only know personally of one or two
17 cases.

18 BY MR. SHUR:

19 Q. Mr. Levy, the prosecutor asked you if Mr. Silver paid you a
20 fee in connection with introducing him to these investments.

21 Do you remember that?

22 A. Yes.

23 Q. And you said no, right?

24 A. Correct.

25 Q. Mr. Silver never said he wasn't going to -- you never asked

FBI5sil3

Levy - cross

1 him to pay a fee, right?

2 A. That's correct.

3 Q. Because he is your friend, right?

4 A. Correct.

5 Q. And you introduced him to these investments because he is a
6 friend, right?

7 A. Correct.

8 Q. The other friends that you have introduced to investments
9 like this, did you charge them a fee?

10 A. No.

11 Q. Mr. Levy, fair to say you're a social person?

12 A. Yes.

13 Q. You know a lot of people, yes?

14 A. Yes, I do.

15 Q. You have a lot of friends?

16 A. I do.

17 Q. Friends in the business community?

18 A. Yes.

19 Q. Friends who are leaders in the community?

20 A. Yes.

21 Q. Friend who are politicians?

22 A. Yes.

23 Q. At all levels of government; local, state, federal?

24 A. Correct.

25 Q. You are friends with the Assembly Member from Buffalo?

FBI5sil3

Levy - cross

1 A. Several of them.

2 Q. And friends with the Mayor of Buffalo?

3 A. Several of them.

4 Q. In fact, one of the former mayors of Buffalo was someone
5 who a friend and who you introduced to an investment, right?

6 A. Correct.

7 Q. And you are friends with U.S. Senator Charles Schumer?

8 A. Yes, I am.

9 MS. COHEN: Objection, your Honor.

10 THE COURT: Sustained. I think you have made your
11 point.

12 Q. Is it fair to say that you are a connector?

13 MS. COHEN: Objection, your Honor.

14 THE COURT: I'm not sure what that means.

15 Q. You connect people to one another, you make introductions?

16 MS. COHEN: Objection, your Honor.

17 THE COURT: Overruled.

18 Q. You can answer the question.

19 A. I'm not sure of the definition.

20 Q. Sure.

21 Well, do you introduce people to one another in the
22 business community?

23 A. I'm a salesman, so part of sales is relationships.

24 Q. Do you remember Ms. Cohen asked you whether Mr. Silver put
25 some of his investment in Counsel Financial, I believe she

FBI5sil3

Levy - cross

1 asked you, in the name of another person.

2 Do you remember that question?

3 A. Yes, I do.

4 Q. This other person was his wife?

5 A. Correct.

6 Q. Rosa, correct?

7 A. Correct.

8 Q. And it wasn't unusual, within Counsel Financial, to have
9 investors' family members invest in the fund, right?

10 A. Correct.

11 Q. You, yourself, have family members invested?

12 A. Most of my family.

13 Q. I forget exactly which investment vehicle it was in
14 connection with but Ms. Cohen at one point had asked you
15 whether you gave Mr. Silver \$250,000 of your investment. Do
16 you recall that question?

17 A. I think she was, in that case, talking about Lerer.

18 Q. And to be clear, you didn't give Mr. Silver the money, he
19 invested it in the investment opportunity, correct?

20 A. That's correct.

21 Q. I want to discuss a little bit sort of this term nominee,
22 all right?

23 A. Sure.

24 Q. So, we looked at a chart where the term nominee appeared a
25 few times, right? And there is nothing improper about setting

FBI5sil3

Levy - cross

1 an investment up through a nominee, correct?

2 A. Not at all.

3 Q. And I think you said that this was no different than a
4 direct investment, right?

5 A. That's correct.

6 Q. So, if Mr. Silver put in \$25,000 and the investment made
7 money he would make money, correct?

8 A. Everything was a pass-through, correct.

9 Q. And if the \$25,000, he lost it all, then he was out of luck
10 and he lost his money, right?

11 A. Correct.

12 Q. The reason it was set up through a nominee was because,
13 based on the way the investment was structured, it had to be
14 set up that way to make the investment?

15 A. Correct.

16 Q. Right.

17 You weren't hiding anything, right?

18 A. No. Not at all.

19 Q. You weren't hiding Mr. Silver's participation in this
20 investment, right?

21 A. Not at all.

22 THE COURT: Mr. Shur, how much longer are you going to
23 be?

24 MR. SHUR: Judge, I would say 20 minutes, 25 minutes.

25 THE COURT: Okay. Well keep going for another five

FBI5sil3

Levy - cross

1 minutes then we are going to break for lunch.

2 MR. SHUR: Okay Judge.

3 BY MR. SHUR:

4 Q. Mr. Levy, you understand that Mr. Silver's district is here
5 in lower Manhattan?

6 A. I do.

7 Q. And as a friend, Mr. Silver helped set up an appointment
8 for you to see the September 11th Memorial in Lower Manhattan?

9 MS. COHEN: Objection, your Honor.

10 THE COURT: Sustained.

11 Q. Mr. Levy, are you, based on your relationship with
12 Mr. Silver, are you aware that he cared about issues regarding
13 September 11th --

14 MS. COHEN: Objection, your Honor.

15 Q. -- that affected his constituents?

16 THE COURT: Sustained.

17 BY MR. SHUR:

18 Q. Mr. Levy, I would like to talk to you about, I think is it
19 the Buffalo Waterfront Commission?

20 A. Erie Canal Harbor Development Corporation.

21 Q. I see.

22 A. I didn't name it.

23 Q. Okay. What's the Buffalo Waterfront Commission? Did I
24 just make that up?

25 A. Yeah. There probably was one at one time, though.

FBI5sil3

Levy - cross

1 Q. Okay.

2 It is a commission, though? Did I get that right?

3 A. Yeah.

4 Q. So, this was -- was it to rebuild the waterfront in
5 Buffalo?

6 A. Correct.

7 Q. So the mission of the commission was to rebuild the
8 waterfront area in downtown Buffalo?

9 A. That's correct.

10 Q. And this was good for Buffalo, yes?

11 A. Great for Buffalo.

12 Q. And you were appointed to be the -- was it the chair?

13 A. Yes, I was the chair.

14 Q. And you were appointed by the governor, correct?

15 A. Correct.

16 Q. At the time it was Governor Eliot Spitzer?

17 A. Yes, sir.

18 Q. You weren't appointed by the New York State Legislature,
19 right?

20 A. No. It did not require approval.

21 Q. And fair to say that you were well qualified for this
22 position?

23 A. I would like to think so.

24 Q. Based on your business experience and your knowledge of and
25 your relationships in Buffalo it made sense, right?

FBI5sil3

Levy - cross

1 A. And my passion --

2 MS. COHEN: Objection, your Honor.

3 THE COURT: Overruled.

4 Q. I'm sorry?

5 A. And my passion for Buffalo.

6 Q. You have a passion for Buffalo, right?

7 A. Yes, sir.

8 Q. And you participated in the commission because you cared
9 about Buffalo, right?

10 A. Yes, sir.

11 Q. You weren't paid for this position, correct?

12 A. No.

13 Q. You did it on a volunteer basis?

14 A. Yes.

15 Q. And you grew up in Buffalo, right?

16 A. Yes.

17 Q. And you went to school at SUNY Buffalo?

18 A. Correct.

19 Q. At some point after graduating from college you moved to,
20 was it Minnesota?

21 A. I moved to Albany first.

22 Q. You moved to Albany, and then there came a point where you
23 left New York?

24 A. Back to Buffalo, then I went to Minnesota for one year.

25 Q. And you were, was it the chief operating officer of a

FBI5sil3

Levy - cross

1 company there?

2 A. Correct.

3 Q. It was a great opportunity for you, right?

4 A. Yes.

5 Q. But after a while you moved back to Buffalo, right?

6 A. Yes.

7 Q. Because you consider Buffalo your home?

8 A. Yes, sir.

9 Q. And you started a business there?

10 A. Several.

11 Q. And you are passionate about building the economy in
12 Buffalo, right?

13 A. Yes, sir.

14 Q. And creating jobs there?

15 A. Yes.

16 Q. You are involved in community activities within Buffalo?

17 A. Many.

18 MR. SHUR: Judge, I don't know if you want to take a
19 break or I'm happy to continue.

20 THE COURT: Keep going another few more minutes.

21 MR. SHUR: Okay.

22 THE COURT: Don't feel that you have to take up all of
23 this time, Mr. Shur. If you are out of questions you can say
24 you are out of questions.

25 MR. SHUR: I understand. Thank you.

FBI5sil3

Levy - cross

1 THE COURT: Maybe we can get him out of here before
2 lunch.

3 MR. SHUR: Okay. I will try my best.

4 BY MR. SHUR:

5 Q. You mentioned that there was a project that the commission
6 was involved in that was going to be reviewed by the PACB,
7 right?

8 A. Yes.

9 Q. And you talked with Mr. Silver about the project, right?

10 A. Yes.

11 Q. You were passionate about it, correct?

12 A. Yes.

13 Q. It was going to be a good thing for Buffalo?

14 A. Correct.

15 Q. And he listened to you, right?

16 A. Yes, he did.

17 Q. And he asked thoughtful questions about the project, right?

18 A. Many.

19 Q. And fair to say Mr. Silver would listen to the folks who
20 wanted to share their views on a particular issue?

21 MS. COHEN: Objection, your Honor.

22 THE COURT: Sustained.

23 Q. Have you been party to discussions with other people where
24 Mr. Silver listened to them about their views on a particular
25 issue?

FBI5sil3

Levy - cross

1 MS. COHEN: Objection, your Honor.

2 THE COURT: Sustained.

3 Q. I had asked you whether Mr. Silver was hard to read
4 sometimes. Do you remember that?

5 A. Yes.

6 Q. Sir, would you say he has a good poker face?

7 A. Yes.

8 Q. But he would listen, right, when you talked to him?

9 A. Yes.

10 Q. And sometimes wouldn't necessarily commit, right?

11 MS. COHEN: Objection, your Honor.

12 THE COURT: Overruled, but I'm going to stop -- answer
13 that question.

14 THE WITNESS: Or agreed, correct.

15 THE COURT: Okay. I'm going to stop you there. I
16 unfortunately, otherwise I would do my best to get you off the
17 stand but I have a commitment today for lunch so we are going
18 to have a slightly longer lunch, probably not be back until a
19 little bit after 2:00.

20 Don't discuss the case. If you want to check your
21 phones, check them early and, again, probably a little after
22 2:00 when we bring you back.

23 (Continued on next page)

FBI5sil3

Levy - cross

1 (Jury not present)

2 THE COURT: You are going to come back but go with him
3 now.

4 (Witness steps down)

5 THE COURT: Mr. Shur, I have the feeling that you were
6 filibustering. I don't know why but that's my sense. But, be
7 that as it may, you have another 10 minutes to go.

8 MR. SHUR: If that, Judge.

9 THE COURT: That's what I thought. Okay. Be back at
10 five after two.

11 (Luncheon recess)

12 (Continued on next page)

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FBIYSIL4

Levy - Cross

AFTERNOON SESSION

2:10 p.m.

THE COURT: You're going to finish the cross, finish with Mr. Levy, and then is that it?

MS. COHEN: We are going to call FBI Special Agent Deanna Pennetta.

I have talked to defense counsel, and they have informed us that they have no witnesses on their case. They sent us a bunch of documents yesterday very late, but we have looked at them.

We are prepared to -- I'm going to try to discuss them with defense counsel and maybe narrow the gap. We do not object on grounds of authenticity to any of the documents. It's simply rather whether they are admissible.

My proposal to your Honor is at the afternoon break, Your Honor, that we present you those defense exhibits that the government does not agree to, and perhaps you can just rule on the admissibility.

THE COURT: It sounds to me then like you're going to rest before the afternoon break.

MS. COHEN: Correct. Except we may have a stip to read in. We can read that in before the break or after the break. That's up to your Honor.

The testimony of this witness and the next witness should be completed, your Honor. If that's acceptable to

FBIYSIL4

Levy - Cross

1 your Honor, it may mean a little bit longer of an afternoon
2 break, but I don't think much longer.

3 THE COURT: That's fine.

4 Mr. Shur, how much longer do you have?

5 MR. SHUR: Five minutes, Judge.

6 MR. MASTER: Your Honor, there are a couple of brief
7 matters that we could take up.

8 THE COURT: They're about to come out.

9 MR. MASTER: Then we'll just deal with it at a break.
10 Thank you.

11 (Jury present)

12 THE COURT: Mr. Levy, you're still under oath.

13 Mr. Shur.

14 MR. SHUR: Thank you, Judge.

15 BY MR. SHUR:

16 Q. Mr. Levy, we were talking about the Eerie Canal Commission.

17 Do you remember that?

18 A. Yes, sir.

19 Q. That's not a private company of yours. That's a public
20 entity; is that right?

21 A. That's a state authority.

22 Q. Its mission is to rebuild and rejuvenate parts of Buffalo?

23 A. Yes, sir.

24 Q. I think you mentioned it was a matter before the PACB.

25 Do you recall that?

FBIYSIL4

Levy - Cross

1 A. There were several.

2 Q. Before those matters got to the PACB, they're reviewed and
3 approved by the Urban Development Corporation; is that right?

4 A. Yes. Actually, Empire State Development Corporation.

5 Q. Empire State Development Corporation?

6 A. Yes, sir.

7 Q. That's an agency within the executive branch of the
8 New York State government?

9 A. I believe so.

10 Q. Before we broke for lunch, you had testified that when you
11 would tell Mr. Silver about investment opportunities, sometimes
12 he would decide to invest, and sometimes he would decide not to
13 invest.

14 Right?

15 A. Correct.

16 Q. And Mr. Silver turned down investments because it involved
17 the State of New York; right?

18 MS. COHEN: Objection, your Honor.

19 THE COURT: Sustained.

20 BY MR. SHUR:

21 Q. Are you aware that Mr. Silver turned down investments --

22 MS. COHEN: Objection, your Honor.

23 THE COURT: You have to let him finish the question.

24 MS. COHEN: Can we have a sidebar then? Because I
25 think he's trying to testify.

FBIYSIL4

Levy - Cross

1 THE COURT: Please don't do speaking objections.

2 BY MR. SHUR:

3 Q. Mr. Levy, are you aware that Mr. Silver turned down
4 investments that you brought to him because they involved the
5 State of New York?

6 MS. COHEN: Objection, your Honor.

7 THE COURT: Come up.

8 (At the sidebar)

9 THE COURT: What possible relevance does that have?

10 MR. SHUR: It goes to Mr. Silver's state of mind,
11 Judge.

12 THE COURT: Relative to what?

13 MR. SHUR: Relative to his private business dealings
14 and his public position.

15 THE COURT: No. Doing one good thing doesn't mean
16 that you don't do other bad things.

17 MR. SHUR: Judge, I'm not saying that.

18 THE COURT: Well, then why is it relevant?

19 MR. SHUR: Because it's relevant of his good faith.

20 THE COURT: In that investment. So what? Nobody is
21 charging him with corrupt investments. They're charging him
22 with money laundering and extortion.

23 This has been a theme. The fact that someone does
24 good things sometimes has nothing to do, unless you want to
25 call character witnesses and have them be subject to

FBIYSIL4

Levy - Cross

1 cross-examination as character witnesses.

2 The fact that someone does good things doesn't mean --
3 it has nothing to do with their state of mind relative to bad
4 things.

5 MR. SHUR: Judge, I understand what you're saying.
6 Let me say this. The government has argued throughout this
7 trial and in opening statements that Mr. Silver abused his
8 public position each and every step of the way.

9 THE COURT: In the crimes charged.

10 MR. SHUR: I've heard this over and over again, that
11 these are building blocks but not one single piece of direct
12 evidence but a thousand different pieces that the government is
13 going to cobble together.

14 Now, this is one question that I'm asking to ask this
15 witness that shows in connection with what the government is
16 saying he abused his public position for private gain here that
17 shows the evidence of his acting in good faith with respect to
18 his private dealings in connection with if there is some
19 overlap with this.

20 MS. COHEN: Your Honor, I would also add that if he
21 adduces it, it's hearsay. And second, that he moved to exclude
22 all the other evidence about other times when Sheldon Silver
23 talked to Jordan Levy and Jordan Levy told him he wanted things
24 done from Buffalo and he agreed to do them.

25 You specifically asked for that to be excluded. If

FBIYSIL4

Levy - Cross

1 you want to open the door to all that.

2 MR. SHUR: It's nonhearsay, Judge.

3 THE COURT: Of course it's hearsay. How else would he
4 know?

5 MR. SHUR: It's an event. It is not a statement.

6 THE COURT: No. The statement is why he turned it
7 down.

8 MR. SHUR: The statement is why he turned it down.

9 THE COURT: Sustained.

10 Mr. Shur, what else is left?

11 MR. SHUR: I have like three more questions, Judge.

12 THE COURT: Not on this subject?

13 MR. SHUR: Not on this subject.

14 THE COURT: Okay.

15 (In open court)

16 BY MR. SHUR:

17 Q. Mr. Levy, the prosecutor asked you about Mr. Silver
18 splitting his note between himself and his wife.

19 Do you recall that?

20 A. I do.

21 Q. This was a Counsel Financial note; right?

22 A. Yes, sir.

23 Q. Investors in Counsel Financial often will consolidate notes
24 and split notes; right?

25 A. It's possible, yes.

FBIYSIL4

Levy - Cross

1 Q. It's not unusual; right?

2 A. Probably not.

3 Q. You mentioned a conversation with Mr. Silver in which he
4 requested to split his note between him and his wife; right?

5 Do you recall that?

6 A. Yes.

7 Q. Mr. Silver didn't put his entire investment in Counsel
8 Financial under his wife's name; right?

9 A. He did not.

10 Q. He split it evenly, 50/50, between him and his wife; right?

11 A. Yes.

12 Q. And splitting assets between husband and wife 50/50 is
13 common for estate planning purposes; right?

14 MS. COHEN: Objection, your Honor.

15 THE COURT: Sustained.

16 BY MR. SHUR:

17 Q. I believe you testified that in your conversation with
18 Mr. Silver that he said it had something to do with his
19 disclosure forms.

20 Do you remember that?

21 A. Yes.

22 Q. Are you aware that Mr. Silver disclosed both his and his
23 wife's Counsel Financial note on his disclosure forms in the
24 years before the note was split and in the years after?

25 A. I am not.

FBIYSIL4

Levy - Redirect

1 Q. Is it fair to say you're not intimately familiar with
2 Mr. Silver's disclosure forms?

3 A. Not at all.

4 MR. SHUR: One moment, Judge.

5 (Pause)

6 MR. SHUR: Nothing further. Thank you.

7 THE COURT: Any redirect?

8 MS. COHEN: Briefly.

9 REDIRECT EXAMINATION

10 BY MS. COHEN:

11 Q. Mr. Levy, Sheldon Silver told you that he wanted to split
12 his investment in Counsel Financial between himself and his
13 wife because he didn't want to disclose his entire investment
14 at that time in Counsel Financial on his financial disclosure
15 forms that were filed as part of his requirement as a state
16 elected official; correct?

17 A. That's my recollection.

18 Q. And there were no other investors in Counsel Financial who
19 were an elected official; correct?

20 A. At the time they made their investment?

21 Q. Correct.

22 A. Correct.

23 Q. The only other elected official that was ever even mildly
24 related to Counsel Financial was the former mayor of Buffalo.

25 A. Correct.

FBIYSIL4

Levy - Redirect

1 Q. At the time of his investment, that was of his campaign
2 fund; right?

3 A. Yes.

4 Q. At the time of the former mayor's investment, he was
5 leaving office; is that right?

6 A. Yes.

7 Q. So there was no other investor in Counsel Financial who was
8 an elected official who asked you to split their investment in
9 order to avoid disclosing the amount of their investment to the
10 public; is that right?

11 MR. SHUR: Objection.

12 THE COURT: Overruled.

13 You can answer.

14 THE WITNESS: Yes.

15 BY MS. COHEN:

16 Q. So there was no one else, other than Sheldon Silver, who
17 ever asked you to split a note in order to avoid public
18 disclosure on their legislative ethnics form?

19 MR. SHUR: Objection.

20 THE COURT: I think it's now been asked and answered
21 several times. Sustained.

22 BY MS. COHEN:

23 Q. You testified on cross-examination that you are friends
24 with lots of politicians, state, local, and federal.

25 Do you recall that?

FBIYSIL4

Levy - Redirect

1 A. Yes.

2 Q. None of those politicians ever asked you for access to any
3 investments, did they?

4 A. No, they did not.

5 Q. Sheldon Silver was the only politician that ever asked you
6 for access to the investments?

7 A. Yes.

8 Q. And you testified on cross-examination that you knew of
9 only one or two cases that Sheldon Silver had been involved
10 with at Weitz & Luxenberg.

11 Do you recall that?

12 A. Yes.

13 Q. And those cases were accident-type cases; isn't that right.

14 A. I believe so.

15 Q. They weren't asbestos cases, were they?

16 A. Not to my knowledge.

17 Q. And Sheldon Silver never talked to you about any asbestos
18 cases that he was working on; right?

19 A. Never.

20 Q. And Sheldon Silver never talked to you about any
21 asbestos-related research he was interested in; right?

22 A. No.

23 Q. And Sheldon Silver never told you about any
24 asbestos-related research that he directed state money to;
25 right?

FBIYSIL4

Levy - Redirect

1 A. No.

2 Q. And you talked to Sheldon Silver upwards of three times a
3 week?

4 A. Many times a week.

5 MS. COHEN: No further questions, your Honor.

6 THE COURT: Okay. Thank you. You can step down.

7 (Witness excused)

8 THE COURT: Call your next witness.

9 MS. COHEN: Before we call Special Agent Deanna
10 Pennetta, we'd like to read stipulations into the record. One
11 is a very lengthy bank record stipulation.

12 And, with the permission of your Honor, rather than
13 read each bank record, account number, and account name, I will
14 just refer to the table.

15 THE COURT: Perfect.

16 MS. COHEN: Thank you, your Honor.

17 THE COURT: You have no objection to that; right?

18 MR. SHUR: No, your Honor.

19 MS. COHEN: I know you were looking forward to a
20 revisit of the phone record stipulation.

21 THE COURT: You have no objection to that; correct?

22 MR. SHUR: No, Judge.

23 MS. COHEN: There's also a stipulation related to
24 JoRon, but that is short. So I will read that.

25 THE COURT: Okay.

FBIYSIL4

Levy - Redirect

1 MS. COHEN: Your Honor, the first stipulation the
2 government would like to read into evidence is marked for
3 identification Government Exhibit S-3.

4 Mr. Coccaro.

5 It is a stipulation between the parties in this case.
6 It states as follows:

7 Number one, if called to testify, a custodian of
8 records for JoRon Management, LLC (JoRon), will testify as
9 follows:

10 The documents marked for identification as Government
11 Exhibits 985 and 1007 through 1060 are true and correct copies
12 of records that were maintained by JoRon in the ordinary course
13 of its activities or made or received at or near the time of
14 the acts, transactions, and events record therein and contained
15 information set forth by or obtained from persons with
16 knowledge of those matters.

17 Number two, if called to testify, a custodian of
18 records for Counsel Financial Services, LLC and Counsel
19 Financial Holdings, LLC, collectively Counsel Financial, would
20 testify as follows:

21 The documents marked for identification as Government
22 Exhibits 950 through 957, 961 through 965, 968, 969, 971, 972,
23 974, 976, 978 through 980, 982, and 1061 are true and correct
24 copies of records that were maintained by Counsel Financial in
25 the ordinary course of its business or made or received at or

FBIYSIL4

Levy - Redirect

1 near the times of the acts, transactions, and events recorded
2 therein and contain information set forth by or obtained from
3 persons with knowledge of those matters.

4 It is signed by the parties, and it is further
5 stipulated and agreed that this stipulation may be received in
6 evidence as a government exhibit at trial, dated October 28,
7 2015.

8 Your Honor, the government moves Government Exhibit
9 S-3 into evidence.

10 MR. SHUR: No objection.

11 THE COURT: Received.

12 (Government's Exhibit S-3 received in evidence)

13 MS. COHEN: The government also moves Government
14 Exhibits 985 and 1007 through 1060 into evidence.

15 MR. SHUR: No objection.

16 THE COURT: 985 and 1007 through 1060 are received.

17 (Government's Exhibits 985 and 1007 through 1060
18 received in evidence)

19 MS. COHEN: Thank you, your Honor.

20 THE COURT: The other documents are already in
21 evidence or not being moved in?

22 MS. COHEN: Sorry, your Honor. I didn't turn the
23 page. I'm sorry.

24 I believe that most of these actually are in evidence
25 through Paul Cody. We'll review the list.

FBIYSIL4

Levy - Redirect

1 THE COURT: Okay.

2 MS. COHEN: Your Honor, the government would like to
3 read a stipulation into the record that has been marked for
4 identification Government Exhibit S-5.

5 This is the bank record stipulation. So I won't read
6 the entire chart and just refer to it, which the defense has no
7 objection to.

8 Marked for identification as Government Exhibit S-5 is
9 a stipulation by and between the parties in this case. It
10 stipulates as follows much.

11 The exhibits set forth in the following chart contain
12 true and correct copies of financial records that were created
13 by a person with knowledge of or created from information
14 transmitted by a person with knowledge of the information shown
15 or created at or near the time the information became available
16 to the records custodian listed in the chart and were created
17 and maintained by the records custodian listed in the chart as
18 part of its regularly conducted business activity.

19 Page 2, if you can just publish that for the jury, is
20 a chart of different government exhibits listing the custodian
21 for that exhibit, the account name associated with the account,
22 and the account number.

23 The chart continues on page 3 of the stipulation,
24 Mr. Coccaro.

25 Number two, JP Morgan Chase Bank NA, Bank of America

FBIYSIL4

Levy - Redirect

1 NA, Bank of New York Mellon, Barclays Bank of Delaware, Banco
2 Popular, Citibank, HSBC, Morgan Stanley, and Synacor Bank are
3 financial institutions that are ensured by the Federal Deposit
4 Insurance Corporation.

5 It is dated October 28, 2015, signed by the parties.
6 And it is further stipulated and agreed that this stipulation
7 may be received in evidence as a government exhibit at trial.

8 Your Honor, the government moves Government Exhibit
9 S-5 into evidence.

10 THE COURT: All right. S-35 is received.

11 (Government's Exhibit S-5 received in evidence)

12 MS. COHEN: At this time the government also moves the
13 government exhibits referenced in the chart on page 2 and 3 of
14 Government Exhibit S-5 into evidence. I can name them, or I
15 can hand up the stipulation to your Honor.

16 THE COURT: Can you just read the numbers into the
17 record.

18 MS. COHEN: Absolutely.

19 Government Exhibit 1203, Government Exhibit 1204,
20 Government Exhibit 1205, Government Exhibit 1206, Government
21 Exhibit 1207, Government Exhibit 1208, Government Exhibit 1209,
22 Government Exhibit 1210, Government Exhibit 1222, Government
23 Exhibit 1223, Government Exhibit 1224, Government Exhibit 1225,
24 Government Exhibit 1226, Government Exhibit 1227, Government
25 Exhibit 1228, Government Exhibit 1229, Government Exhibit 1230,

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Levy - Redirect

1 Government Exhibit 1231, Government Exhibit 1232, Government
2 Exhibit 1233, Government Exhibit 1234, Government Exhibit 1235,
3 and Government Exhibit 1236 the government moves into evidence.

4 THE COURT: Okay. What is 1235?

5 MS. COHEN: 1235, your Honor, is a bank record from
6 Fidelity Investments regarding an account in the name of Arlene
7 Lerer with account number 614321354.

8 THE COURT: Was is the account 1236?

9 MS. COHEN: That is an account in Banco Popular in the
10 name of Arlene Lerer, C/O Sheldon Silver, Esquire, care of
11 Sheldon Silver, Esquire, with the account number 5100004897.

12 THE COURT: There's no objection to those documents;
13 correct?

14 MR. SHUR: No objection.

15 THE COURT: They're received.

16 (Government's Exhibits 1203, 1204, 1205 received in
17 evidence)

18 (Government's Exhibits 1206, 1207, 1208 received in
19 evidence)

20 (Government's Exhibits 1209, 1210, 1222 received in
21 evidence)

22 (Government's Exhibits 1223, 1224, 1225 received in
23 evidence)

24 (Government's Exhibits 1226, 1227, 1228 received in
25 evidence)

FBIYSIL4

Pennetta - Direct

1 (Government's Exhibits 1229, 1230, 1231 received in
2 evidence)

3 (Government's Exhibits 1232, 1233, 1234 received in
4 evidence)

5 (Government's Exhibits 1235, and 1236 received in
6 evidence)

7 MS. COHEN: Thank you, your Honor.

8 At this time the government calls Special Agent Deanna
9 Pennetta from the Federal Bureau of Special Investigation.

10 MR. MASTER: Your Honor, we have the same jury
11 binders. We've added some charts to those binders and request
12 permission to hand them forward.

13 THE COURT: Sure.

14 MR. MASTER: May I proceed?

15 THE COURT: Please.

16 DEANNA PENNETTA,

17 called as a witness by the Government,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MASTER:

21 Q. Where are you currently employed?

22 A. With the Federal Bureau of Investigation.

23 THE COURT: You have to speak up nice and loud.

24 THE WITNESS: With the FBI.

25 BY MR. MASTER:

FBIYSIL4

Pennetta - Direct

1 Q. What's your title with the FBI.

2 A. Special agent.

3 Q. For how long have you been a special agent?

4 A. Almost five years.

5 Q. What did you do before becoming a special agent with the
6 FBI?

7 A. I was a certified public accountant.

8 Q. And what, if any, specialized training did you need in
9 order to get a CPA?

10 A. I have an undergrad degree in accounting, and then I
11 trained under another CPA, worked for them for two years. And
12 I passed the Uniform Licensing Exam.

13 Q. For how long did you work as a CPA?

14 A. Six years.

15 Q. In what areas?

16 A. I worked for three years as a public accountant
17 specializing in not-for-profit organization auditing, and then
18 I worked for a private company preparing their financial
19 statements for three years.

20 Q. Now, did there come a time when you were asked to review
21 and analyze certain records in connection with the
22 investigation of Sheldon Silver, the defendant?

23 A. Yes.

24 Q. What types of records were you asked to review and analyze?

25 A. They were financial records, bank statements, copies of

FBIYSIL4

Pennetta - Direct

1 checks, business records, referral fee reports, invoices.

2 Q. What about records related to telephones?

3 A. Yes. I also reviewed phone records, call data.

4 Q. Did you participate in the investigation of this case?

5 A. No.

6 Q. What role did you play in this matter?

7 A. All I did was analyze the data that was provided to me,
8 summarize it.

9 Q. Did you work by yourself, or did others assist you with
10 data entry?

11 A. No. Others assisted with data entry.

12 Q. Once others working with you entered the data, what role
13 did you play in verifying the accuracy of the data and
14 preparing charts based on that?

15 A. I confirmed the information in the database to the actual
16 paper copies that we received, and then I used the information
17 in the database to kind of sort it, organize it, summarize it.

18 Q. Now, let's talk about some of the records that you analyzed
19 and the charts you prepared based on that analysis.

20 Were you provided with records for certain cell phone
21 numbers that were used by Sheldon Silver, the defendant?

22 A. Yes, sir.

23 Q. Were you also provided with records related to phone
24 numbers used by individuals and entities that are connected in
25 some way to this matter?

FBIYSIL4

Pennetta - Direct

1 A. Yes.

2 Q. What were you asked to do with those records?

3 A. I was asked to look through them and determine how many, if
4 any, contacts between the two numbers there were.

5 Q. And I'd like to direct your attention to what's in your
6 binder as Government Exhibit 1502.

7 For the members of the jury, it's the first tab after
8 the transcripts.

9 Do you recognize that document?

10 A. Yes.

11 Q. How do you recognize it?

12 A. I prepared it.

13 Q. Did you prepare it based on the analysis of those cell
14 phone records that you were just describing doing?

15 A. Yes.

16 Q. Is it a fair and accurate summary of the information that
17 is contained in those phone records?

18 A. Yes.

19 MR. MASTER: The government offers Government Exhibit
20 1502.

21 THE COURT: Any objection?

22 MR. COHEN: No objection, your Honor.

23 THE COURT: 1502 is received.

24 (Government's Exhibit 1502 received in evidence)

25 BY MR. MASTER:

FBIYSIL4

Pennetta - Direct

1 Q. Just explain for the members of the jury what you did to
2 prepare Government Exhibit 1502.

3 A. We'll start with the Sheldon Silver 5187 phone number.
4 What I did was I reviewed the phone records that I had for that
5 phone number, and I searched for all of the numbers listed
6 under the contact number column and counted up the instances in
7 which either Sheldon Silver made an outgoing phone call to that
8 contact number and how many times that contact number made an
9 incoming phone call to Sheldon Silver's phone.

10 And then I did the same thing for the 0067 cell phone
11 as well.

12 Q. You're using the last four digits of the phone number when
13 you're referring to this chart.

14 Let's just explain, I guess, for each -- you're saying
15 you looked at two sets of cell phone records?

16 A. Yes. I looked at a full set of cell phone records for the
17 5187 phone and a full set of records for the 0067 phone. The
18 time periods are listed below for the dates that each of the
19 records covered.

20 Q. So the third column there in the chart -- it's called call
21 frequency chart, Sheldon Silver cell phones.

22 The third column in the chart -- that reflects
23 activity on what you described as the 5187 phone. That's the
24 917-603-5187 phone?

25 A. Yes.

FBIYSIL4

Pennetta - Direct

1 Q. And the fourth column over there -- that's activity that
2 you observed on the 646-438-0067 phone?

3 A. Yes.

4 Q. So those are the third and fourth columns.

5 What do the numbers in each of the rows represent?
6 Just starting, for example, with the name Brian Meara.

7 A. So Brian Meara is the contact, and the phone number
8 associated with Brian Meara is 917-273-1764.

9 So I reviewed the 5187, Sheldon Silver's 5187 phone
10 records -- it was a computerized document. So I was able to
11 search it quite easily -- and found that there were 234
12 incoming phone calls from Brian Meara's 1764 phone number to
13 Sheldon Silver's 5187 phone number.

14 And there were 54 outgoing calls from Sheldon Silver's
15 5187 number to Brian Meara's 1764 number for a total of 288
16 contacts.

17 Q. So that's the column that is listed under the row of Brian
18 Meara, 1764, and the phone number of 5187?

19 A. Yes.

20 Q. The 288 total calls of which 234 came from the Brian Meara
21 phone to the 5187 phone, and then 54 calls placed from the 5187
22 phone to the Brian Meara 1764 phone?

23 A. Yes.

24 Q. Again, you said you were able to search -- you used
25 electronic tools to search for phone counts?

FBIYSIL4

Pennetta - Direct

1 A. Yes. The records were electronic. So I was able to use a
2 search function and count function to determine the number.

3 Q. Did those phone records also indicate whether the calls
4 were incoming or outgoing?

5 A. Yes, they did.

6 Q. So is that the source of the information that's in this
7 particular cell chart?

8 A. Yes, it is.

9 Q. Now, in addition to there being contact between the Brian
10 Meara 1764 phone and the Sheldon Silver 5187 cell phone, was
11 there also contact between the Brian Meara of 1764 cell phone
12 and the Silver 0067 phone?

13 A. Yes. I did the same -- I performed the same search
14 function for the 0067 phone and found that there were two
15 incoming calls from Brian Meara's 1764 phone, and there were 20
16 outgoing calls from Sheldon Silver's 0067 phone to Brian
17 Meara's 1764 phone for a total of 22 phone calls between the
18 two.

19 Q. And then, just going down the line, there was another phone
20 record that was provided to you that's associated with Brian
21 Meara, and you observed six -- is it fair to say you observed
22 six incoming calls from the 5127 number to the 5187 cell phone?
23 Correct?

24 A. Yes.

25 Q. Now, there are also two phone numbers here that are

FBIYSIL4

Pennetta - Direct

1 associated with Arthur Luxenberg.

2 Did you observe activity and contact between the two
3 Sheldon Silver cell phones and those two numbers that are
4 associated with Arthur Luxenberg?

5 A. Yes. For Arthur Luxenberg's 6118 phone number, there was a
6 total of 287 calls between that and Sheldon Silver's 5187
7 phone.

8 Of those 287 calls, 210 were incoming, which means
9 they were made from Arthur Luxenberg to Sheldon Silver, and 77
10 were outgoing. That's from Sheldon Silver to Arthur Luxenberg.

11 The same with Sheldon Silver's 0067 phone number.
12 There was a total of 3672 calls between 0067 and Arthur
13 Luxenberg's 6118 phone number. 151 incoming calls from Arthur
14 Luxenberg to Sheldon Silver and 211 outgoing calls from Sheldon
15 Silver to Arthur Luxenberg.

16 Q. And, again, you don't have to read each of the entries, but
17 is there activity between the 5163 phone and Sheldon Silver's
18 two cell phones? The Luxenberg 5613 phone.

19 A. Yes, there is.

20 Q. Then there's a phone number associated with someone named
21 Jordan Levy.

22 Is there activity between a phone number associated
23 with Jordan Levy and both of the Sheldon Silver cell phones?

24 A. Yes, there is.

25 Q. And there are several numbers associated with Dr. Robert

FBIYSIL4

Pennetta - Direct

1 Taub.

2 Do you see those numbers listed?

3 A. Yes, I do.

4 Q. In your search of the Sheldon Silver 5187 cell phone
5 records, do you see any contact between those three numbers
6 associated with Dr. Robert Taub and the 5187 cell phone?

7 A. No.

8 Q. Again, what is the date range for the records associated
9 with the 5187 phone?

10 A. Those records cover the period of October 14, 2005, through
11 January 21, 2015.

12 Q. So, for that entire period of time, you observed no contact
13 between Sheldon Silver's 5187 cell phone and those three
14 numbers associated with Dr. Taub?

15 A. That's correct.

16 Q. Now, on the 0067 phone, did you observe any contact between
17 Sheldon Silver's 0067 cell phone and those three phone numbers
18 that are associated with Dr. Robert Taub?

19 A. Yes, I did.

20 Q. Did you observe any incoming calls from Dr. Taub's phones
21 to the Sheldon Silver cell phone?

22 A. No.

23 Q. What calls did you observe?

24 A. All of the calls were outgoing. For Dr. Taub's 164 phone
25 number, there were three outgoing calls placed from Sheldon

FBIYSIL4

Pennetta - Direct

1 Silver to Dr. Taub, and there was one outgoing call placed from
2 Sheldon Silver to Dr. Taub at his 0349 phone number.

3 Q. Now, in the case of five calls or fewer, what additional
4 detail were you able to provide in this chart?

5 A. I also listed the dates which the calls were made.

6 Q. So, with respect to the calls from Sheldon Silver's 0067
7 phone to the Dr. Taub 1614 phone, what information were you
8 able to provide on this chart?

9 A. That there was a total of three outgoing calls. Two were
10 made from Sheldon Silver to Dr. Taub on May 24, 2010, and there
11 was a third call made on December 6, 2011.

12 Q. Then with respect to the Dr. Taub 0349 phone, what
13 additional information were you able to provide?

14 A. There was one outgoing call placed from Sheldon Silver to
15 Dr. Taub on October 27, 2010.

16 Q. There's also a phone number associated with the
17 Mesothelioma Center, Columbia Mesothelioma Center.

18 Do you see that number listed there?

19 A. Yes.

20 Q. Did you also search to see if there was any contact of any
21 kind between Sheldon Silver's cell phones and that Mesothelioma
22 Center?

23 A. I did search, and I did not find any records of contact
24 between those numbers.

25 Q. Then there are two numbers associated with a Richard Runes.

FBIYSIL4

Pennetta - Direct

1 Do you see that?

2 A. Yes.

3 Q. Did you see any contact between Sheldon Silver's 5187 cell
4 number and either of those numbers?

5 A. No, I did not.

6 Q. Did you see any incoming calls from Richard Runes' numbers
7 to Sheldon Silver's 0067 number?

8 A. No, I did not.

9 Q. Did you observe any calls from the 0067 number to either
10 number associated with Richard Runes?

11 A. Yes, I did. There was one outgoing call to Richard Runes
12 at the 4900 number on May 18, 2012. And there were two
13 outgoing calls to Richard Runes' 5100 phone number. One was
14 made on May 21, 2012, and the second was made on May 3, 2013.

15 Q. There are numbers associated with Charles Dorego and
16 Glenwood Management.

17 Do you see that?

18 A. Yes.

19 Q. Did you see any contact between Sheldon Silver's cell
20 phones, either of them, and either of those numbers?

21 A. No, I did not.

22 Q. Then there are contacts between two numbers associated with
23 Jay Arthur Goldberg and either of Sheldon Silver's cell phones.

24 Did you observe any contact between the 5187 number
25 and either number associated with Jay Arthur Goldberg?

FBIYSIL4

Pennetta - Direct

1 A. No, I did not.

2 Q. Did you observe any contact between Sheldon Silver's 0067
3 phone and either Jay Arthur Goldberg phone?

4 A. Yes. There were two instances of contact with Jay Arthur
5 Goldberg's 1048 phone. One was an incoming call from
6 Mr. Goldberg to Sheldon Silver on January 18, 2012.

7 And the second instance was an outgoing call from
8 Sheldon Silver to Mr. Goldberg on October 29, 2013. There were
9 also 25 outgoing calls from Sheldon Silver to Jay Arthur
10 Goldberg at his 5582 phone number.

11 Q. You can set that aside.

12 Now, in addition to summarizing call frequency in
13 Government Exhibit 1502, were you asked to look for contacts
14 between certain numbers that were listed on 1502 on certain
15 dates?

16 A. Yes, I was.

17 Q. If you wouldn't mind just taking a look in your binder at
18 an excerpt of what was previously admitted as records for
19 Government Exhibit 1307-1, which is Sheldon Silver's 0067
20 number.

21 This is not in the jury binder. It is in the agent's
22 binder alone. We will put information up on the screen for the
23 members of the jury. It's not a summary chart?

24 THE COURT: Is there an exhibit number?

25 MR. MASTER: 1307-1.

FBIYSIL4

Pennetta - Direct

1 THE COURT: It's already in evidence?

2 MR. MASTER: It is already in evidence.

3 BY MR. MASTER:

4 Q. Again, what number is associated with these records?

5 A. This is for phone number 646-438-0067.

6 Q. I'd like you to take a look at entries for December 28,
7 2010.

8 MR. MASTER: Mr. Coccaro, that's page 132 of the
9 exhibit.

10 BY MR. MASTER:

11 Q. Special Agent Pennetta, it's at 130513 in your binder Bates
12 number.

13 Do you see it there?

14 A. Yes, I do.

15 Q. I would just like to call your attention to the bottom of
16 that page.

17 MR. MASTER: Mr. Coccaro, are you able to zoom in on
18 the bottom of the page?

19 BY MR. MASTER:

20 Q. Do you see a call in those records on December 28, 2010, at
21 10:54 a.m.?

22 A. Yes, I do. It's 2011, not 2010.

23 Q. I'm sorry. My apologies. December 28, 2011, at 10:54 a.m.

24 A. Yes, I do.

25 Q. Is that an incoming call or an outgoing call?

FBIYSIL4

Pennetta - Direct

1 A. That is an outgoing call.

2 Q. To what number was that call placed?

3 A. 917-750-5582.

4 Q. Do you see that number on Government Exhibit 1502?

5 A. Yes, I do.

6 Q. Who is that number associated with?

7 A. Jay Arthur Goldberg.

8 Q. What is the next call immediately following that call to
9 the 5582 number associated with Jay Goldberg?

10 A. There is another outgoing call at 11:01 a.m. to phone
11 number 917-273-1764.

12 Q. Do you see that number on Government Exhibit 1502 as well?

13 A. Yes. That number is associated with Brian Meara.

14 Q. Is there a physical location reflected on Sheldon Silver's
15 phone records for those calls?

16 A. Yes. New York, New York.

17 Q. Now, if you wouldn't mind turning to what's in your binder
18 and previously admitted as Government Exhibit 1308-1-A.

19 Do you see that in your binder?

20 A. Yes.

21 Q. Are those records associated with Brian Meara's 1764
22 number?

23 A. Yes, they are.

24 Q. If you wouldn't mind just turning to page 10 of that
25 exhibit or Bates 134609.

FBIYSIL4

Pennetta - Direct

1 Do you see a call that corresponds, an incoming call,
2 that corresponds with the outgoing call that we just looked at?
3 A. Yes. On 12-28. It shows an incoming call at 11:01 a.m.
4 from phone number 646-438-0067.

5 MR. MASTER: Mr. Coccaro, if you wouldn't mind zooming
6 in on that.

7 BY MR. MASTER:

8 Q. Is there a location, physical location, of the phone that's
9 reflected in this exhibit?

10 A. Yes. It shows that Brian Meara's phone was in Lake Worth,
11 Florida, at the time of the call.

12 Q. Now, just staying with Mr. Meara's records for the moment,
13 I'd like you to turn to the next page, page 11.

14 Do you see a call to -- well, do you see a call in
15 those records at 5:02 p.m. on December 29, 2011?

16 A. Yes, I do.

17 Q. To what number was that call made?

18 A. That was made to 646-258-3300.

19 MR. MASTER: Mr. Coccaro, if you wouldn't mind just
20 zooming in on that. It's in the bottom part of the page, if it
21 works.

22 BY MR. MASTER:

23 Q. You said there's a call to the number 646-258-3300?

24 A. Yes.

25 Q. Just going back to 1502, who is that phone number

FBIYSIL4

Pennetta - Direct

1 associated with?

2 A. Charles Dorego.

3 Q. What is the physical location of the phone as reflected in
4 these records?

5 A. Lantana, Florida.

6 Q. Is there a state associated with the receiving end of the
7 call?

8 A. It shows the destination as New York.

9 Q. Now, if you wouldn't mind turning to the next page, which
10 is page 12.

11 What, if any, additional calls do you see to or from
12 that 3300 number on that date?

13 A. On December 30, there's a call at 2:44 p.m. made to that
14 phone number, an outgoing call. There's also a call on
15 December 30 at 2:52, an incoming call, from the 3300 phone
16 number.

17 Q. What is the location of the Meara phone in both of those
18 calls?

19 A. Lantana, Florida.

20 Q. If you wouldn't mind looking down that page to a call that
21 occurred that same day.

22 MR. MASTER: Mr. Coccaro, if you wouldn't mind zooming
23 in on December 30 at 10:41 p.m. It's about midway down the
24 page.

25 BY MR. MASTER:

FBIYSIL4

Pennetta - Direct

1 Q. Do you see a call to a number 917-273-5100 at that time?

2 A. Yes, I do.

3 Q. Do you know from 1502 who is that number associated with?

4 A. That number belongs to Richard Runes.

5 Q. Is that an incoming call or an outgoing call?

6 A. That is an outgoing call.

7 Q. What is the location of the phone, the Meara phone, as
8 reflected by these records?

9 A. Lantana, Florida.

10 Q. What is the location of the Runes phone?

11 A. New York, New York.

12 Q. Before we conclude looking at these phone records, I'd like
13 you to turn back to 1307-1.

14 MR. MASTER: If you wouldn't mind, Mr. Coccaro,
15 turning to page 133 of 1307-1.

16 BY MR. MASTER:

17 Q. It's in your binder at 130514, Special Agent Pennetta.

18 Do you see any additional calls on December 28, 2011,
19 to the 5582 phone associated with Jay Goldberg?

20 A. Yes. There is a phone call at 3:03 p.m., an outgoing call,
21 to 5582.

22 Q. That's from the Sheldon Silver 0067 number?

23 A. Yes, it is.

24 Q. If you wouldn't mind turning to January 8, 2012.

25 MR. MASTER: That's 136, Mr. Coccaro.

FBIYSIL4

Pennetta - Direct

1 BY MR. MASTER:

2 Q. It's Bates 130517, Special Agent Pennetta.

3 Do you see any call in that record on January 8, 2012,
4 at 10:45 a.m.?

5 A. Yes, I do. There's an outgoing call to phone number
6 917-750-5580.

7 Q. Again, that's from the Sheldon Silver 0067 phone to the Jay
8 Arthur Goldberg 5582 phone?

9 A. Yes, it is.

10 Q. And now just turning in your binder to calls associated
11 with January 18, 2012.

12 MR. MASTER: Mr. Coccaro, it's page 138. It's Bates
13 130519.

14 BY MR. MASTER:

15 Q. Do you see any outgoing calls to the 5582 phone on
16 January 18, 2012?

17 A. Yes. There was one outgoing call at 12:30 p.m.

18 Q. Do you see what is the location of the phone -- the
19 outgoing call from Sheldon Silver's 0067 phone to the 35582
20 phone?

21 A. It shows that the 0067 phone was located in Albany,
22 New York.

23 Q. Where was the location of the receiving phone?

24 A. New York, New York.

25 (Continued on next page)

FBI5sil5

Pennetta - direct

1 BY MR. MASTER:

2 Q. And, do you also see a call immediately following that
3 outgoing call from the number 212-344-1048?

4 A. Yes, I do.

5 Q. And just looking back at 1502, who is that number
6 associated with?

7 A. Jay Arthur Goldberg.

8 Q. I would like to, before we set these aside, if you wouldn't
9 mind just turning to the records associated with January 30th,
10 2012? Mr. Coccaro, it is page 40 of the exhibit and I think it
11 is Bates 130521.

12 Do you see a call from the Sheldon Silver 0067 phone
13 to the Jay Arthur Goldberg 5582 phone on that date?

14 A. Yes. A call was made at 2:55 p.m.

15 Q. And Mr. Coccaro, if you wouldn't mind zooming in to that?

16 You can set that aside. So now, setting aside those
17 phone records, let's talk about another category of records.
18 Did you analyze certain business records for the Law Firm of
19 Weitz & Luxenberg?

20 A. Yes, I did.

21 Q. I would like you to take a look at what's on the witness
22 stand there as Government Exhibit 514-1 through 514-155. Do
23 you recognize those documents?

24 A. These are the business records that I analyzed.

25 Q. Describe what those records are and what you did with them.

FBI5sil5

Pennetta - direct

1 A. These are copies of checks and referral fee reports and
2 what we did, I worked with some other people to create a
3 database, we entered all the information into a database, and
4 from there I was able to organize and summarize and sort it. I
5 summarized it by date and by client name.

6 Q. And are those -- you said date and client name. Are those
7 referral fee reports associated with referral fees paid to
8 Sheldon Silver?

9 A. Yes, they are.

10 Q. And so, Mr. Coccaro, if you wouldn't mind taking a look at
11 Government Exhibit 514-1?

12 Is that the first referral fee report or first
13 referral fee check that you observed based on your review of
14 these records?

15 A. Yes. It is the center check on the page.

16 Q. Mr. Coccaro, if you wouldn't mind zooming in on that check?

17 What is the amount of the check?

18 A. \$176,068.02.

19 MR. COHEN: Excuse me, your Honor. Are these in
20 evidence?

21 MR. MASTER: They are; they were admitted through Gary
22 Klein.

23 Q. That's the referral fee check. Were you able to enter the
24 date of that referral fee check in your database?

25 A. Yes; the date is March 18, 2005.

FBI5sil5

Pennetta - direct

1 Q. And then are there reports that are associated with that
2 referral fee check?

3 A. Yes, there are.

4 Q. And just explain for the members of the jury what you did
5 with the data that's contained in the referral fee reports?

6 A. All the information was entered, like I said it was entered
7 into a database including the client name and the dollar amount
8 of the referral fee and the dates of the checks, and I sorted
9 and summarized it by client name and date.

10 Q. So now I would like you to take a look at what's in your
11 binder as Government Exhibit 441 -- and that is already in
12 evidence. Did you also analyze that record?

13 A. Yes, I did.

14 Q. Just explain for the jury what this reflects.

15 A. This is another business record from Weitz & Luxenberg and
16 it lists out, as the title shows, referral cases for Sheldon
17 Silver so it shows the client name and the intake date which is
18 the date of the referral from Sheldon Silver that he referred
19 it to the client, to Weitz & Luxenberg, it shows the status of
20 the client's case, and the fee listing as the percentage of the
21 referral fee.

22 Q. Now, what were you asked to do with Government Exhibit 441
23 and records of New York Presbyterian Hospital related to
24 Dr. Robert Taub which were already introduced as Government's
25 Exhibits 329, 358 and Government's Exhibits 548 to 571?

FBI5sil5

Pennetta - direct

1 A. I was asked to review both and to compare the client names
2 from the Weitz & Luxenberg list of Sheldon Silver referrals to
3 the patient names of Dr. Taub.

4 Q. And what analysis of the database that you prepared of
5 those referral fee reports were you able to perform once you
6 had a list of clients on 441 who were also patients of
7 Dr. Taub?

8 A. I was able to show the dates and dollar amounts and
9 referral fees that Weitz & Luxenberg paid to Sheldon Silver for
10 referrals related to clients that were also patients of
11 Dr. Taub.

12 Q. I'm showing you -- I would like you to take a look in your
13 binder at what's been marked for identification Government
14 Exhibit 1509.

15 THE COURT: Ladies and gentlemen, don't open your
16 binders until it gets into evidence, okay?

17 MR. MASTER: Sorry.

18 Q. So, when I say I would like you to take a look at your
19 binder I am just referring to the witness, not the jury.

20 So, Special Agent Pennetta, is this a chart that you
21 prepared based on the analysis you just described performing?

22 A. Yes, it is.

23 Q. And just explain again how you prepared this chart.

24 A. I reviewed the listing of referral clients from Sheldon
25 Silver to Weitz & Luxenberg that we just reviewed, as well as a

FBI5sil5

Pennetta - direct

1 patient listing from Dr. Taub, and for any of the names that
2 were included on both of those documents I listed them out
3 here. The intake date is from the sheet that was just up here,
4 the Weitz & Luxenberg list, so that shows the date of the
5 referral and the fees paid to Silver. On the chart here is a
6 total of the referral fees that Sheldon Silver was paid from
7 Weitz & Luxenberg with regard to each of these clients that
8 were also patients of Dr. Taub.

9 Q. Is it a fair and accurate summary of the information you
10 just described reviewing and analyzing?

11 A. Yes, it is.

12 MR. MASTER: The government offers Government Exhibit
13 1509.

14 MR. COHEN: I'm going to object.

15 Your Honor, may we approach?

16 THE COURT: Okay.

FBI5sil5

Pennetta - direct

1 (At side bar)

2 MR. COHEN: I spoke to Mr. Master before. I'm going
3 to have an objection to this exhibit and another couple that he
4 proposes to offer for this reason: The document refers to Taub
5 Patients to Silver and I don't have any question but that
6 Mr. Silver was paid by Weitz & Luxenberg here and these folks
7 may have been, indeed, patients based on the Columbia records
8 of Dr. Taub. There is a no proof of tying them together that
9 the patients of Dr. Taub had became Weitz & Luxenberg clients
10 as a result of a referral. I don't have a problem with the
11 document other than it is Taub patients to Silver because this
12 suggests that they have connected the two.

13 Dr. Taub testified that there were between 20 and 50
14 patients that he referred to Weitz & Luxenberg with Silver, he
15 says, in his testimony -- I have it here -- closer to 25. In
16 his 9/15 debriefing by the government he lists only about four
17 or five, maybe seven patients that he thinks he may have
18 referred. So, the problem is obviously we are both going to
19 argue in summation opposite views of how many patients there
20 are that were referred. The problem with putting this record
21 into evidence, and they'll --

22 THE DEPUTY CLERK: Excuse me, Judge. One of the
23 jurors has to go to the rest room.

24 THE COURT: Take them.

25 MR. COHEN: We are going to both argue this. The

FBI5sil5

Pennetta - direct

1 problem is they are going to take this document, blow it up, it
2 is going to be in the jury room and it is now going to be
3 carved in stone that these 48 patients -- the number here is
4 48 -- these patients were actually referred from Dr. Taub to
5 Mr. Silver and Weitz & Luxenberg. That's my problem with the
6 document. There are a couple more documents, too, that they're
7 referring to them as Taub -- basically Taub referrals -- it
8 says Taub patients to Silver. I don't have any problem with
9 the fact that they were Taub patients. I don't have any
10 problem with the fact that they were ultimately Silver clients.

11 THE COURT: Your problem is with the heading of the
12 chart.

13 MR. COHEN: Correct; and that's going to be true on a
14 number of other documents.

15 MR. SHUR: Sorry to interrupt.

16 MR. COHEN: My lawyer.

17 MR. SHUR: One additional data point.

18 Gary Klein, who is sort of the Weitz & Luxenberg
19 records custodian, his testimony was pretty clear they don't
20 track referrals from doctors because they don't pay the doctors
21 a referral fee and so there was no -- he said there is no
22 definitive way to tell from the intake form just because it
23 says it is a patient of Taub doesn't mean it was referred by
24 Taub.

25 THE COURT: But they paid referral fees to Silver.

FBI5sil5

Pennetta - direct

1 MR. SHUR: Right, but this chart clearly suggests that
2 they were Taub referrals.

3 THE COURT: No, no. I understand.

4 MR. SHUR: Okay.

5 THE COURT: I understand what the objection to the
6 heading is.

7 MR. COHEN: Okay.

8 MR. MASTER: Your Honor, several points in response.

9 First of all, Dr. Taub stated in his testimony that he
10 didn't remember exactly how many patients because he didn't
11 take a -- keep a record of it. We also heard testimony from
12 numerous witnesses, Arthur Luxenberg, Gary Klein, Charles
13 Ferguson, that with a couple --

14 THE COURT: With one exception.

15 MR. MASTER: -- with a couple of the exceptions all
16 the referrals to Sheldon Silver from asbestos cases came from
17 Dr. Taub. Because Dr. Taub did not have a specific memory of
18 exactly the identity of the patients who were referred and
19 because the Weitz & Luxenberg records, as Mr. Shur described,
20 are not fulsome in terms of tracking the referrals, what we
21 did, which is what we are permitted to do, is to use business
22 records to establish the number of Dr. Taub patients who --

23 THE COURT: I completely understand what you did.

24 MR. MASTER: Yes.

25 THE COURT: I also understand their objection. Can

FBI5sil5

Pennetta - direct

1 the heading be changed?

2 MR. MASTER: So then there is yet another issue here.

3 These were provided to the defense, again, more than a
4 month ago. This is not -- when the witness is on the stand is
5 awful and is not an appropriate time. I think this is a fair
6 ground for cross-examination and it is a fair ground for
7 argument on summation. This is an accurate description, it is
8 Taub patients to Silver. That is the number --

9 THE COURT: Taub patients for which Silver received
10 referral fees.

11 MR. MASTER: Correct.

12 MR. COHEN: Your Honor, we have no problem -- I will
13 talk to my colleagues but I don't expect we will have any
14 problem with if they want to repair these charts or amend them
15 and put them in on Monday before closing statements.

16 MR. MASTER: No, that's -- I'm sorry to interrupt.

17 MR. COHEN: Okay.

18 MR. MASTER: I hate to interrupt but, yes, because
19 this is while the witness is on the stand is not an appropriate
20 time to object to some --

21 MR. COHEN: I'm sorry. We talked about this two days
22 ago.

23 MR. MASTER: I don't believe we did. I don't believe
24 we did.

25 THE COURT: Here is one thing I know. Nobody brought

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1 it to my attention before the witness was on the stand which is
2 not an appropriate time to do it.

3 MR. COHEN: I'm sorry.

4 THE COURT: This is exactly --

5 MR. COHEN: No, no, your Honor. We had talked about
6 doing it. We had talked about it this morning and your Honor
7 had a run and we didn't want to interrupt. They're not
8 proceeding in bad faith and neither are we.

9 MR. MASTER: I'm not suggesting that you are
10 proceeding in bad faith. All I am saying is that this was the
11 product of painstaking effort over a period of months to
12 analyze all of these records and put them together. This was
13 not intended to mislead at all. I'm happy to describe --

14 MR. COHEN: I'm not suggesting that the government is
15 misleading.

16 THE COURT: Nobody is suggesting that. However, I
17 understand their objection. I am prepared to allow you to use
18 the chart. I want you to say that the headline is going to be
19 changed to reflect these are Taub patients for which Silver
20 received fees. That is an accurate statement of what this is.

21 MR. COHEN: How about Taub patients who became
22 Weitz & Luxenberg clients?

23 MS. COHEN: No.

24 MR. COHEN: That's true.

25 THE COURT: No.

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1 MS. COHEN: Your Honor?

2 THE COURT: What.

3 MS. COHEN: I think the testimony is clear and the
4 documents support that these are Taub patients that he referred
5 to Silver, not just that were referred to Silver that he sent
6 to Silver. There is nothing inaccurate about that title.

7 THE COURT: Well, he doesn't know. His testimony --
8 look. You have got --

9 MS. COHEN: I understand he may not know but there was
10 other testimony.

11 THE COURT: You have all got fair argument.

12 MR. MASTER: We have all got fair argument.

13 MS. COHEN: It is our chart.

14 THE COURT: You want to get it in?

15 MR. MASTER: Yes. Absolutely we want to get it in but
16 all Ms. Cohen is suggesting if the defense has some other take.
17 I understand they prepared their own chart to use in
18 cross-examination.

19 MS. COHEN: Put their own charts on.

20 MR. COHEN: Not relating to this.

21 MR. MASTER: Well, you know, not on this specific
22 point, but.

23 MS. COHEN: They can make their arguments.

24

25

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1 (In open court)

2 THE COURT: Ladies and gentlemen, can I ask you all to
3 step into the jury room?

4 I ask you to step out of the witness box.

5 (Witness steps down)

6 (Continued on next page)

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1 (Jury not present)

2 THE COURT: All right. We are going to resolve now
3 all of the issues that the defense has with the government
4 charts, something that should have been done before the witness
5 was on the stand.

6 MR. COHEN: Okay.

7 THE COURT: Mr. Cohen, we have discussed your
8 objection to the heading of 1509.

9 MR. COHEN: Right.

10 THE COURT: What other objections do you have?

11 MR. COHEN: Same heading at 1511.

12 THE COURT: 1511? 1511.

13 MR. COHEN: I'm sorry, 1508. 1508. It is the same
14 headliner.

15 MR. MASTER: Your Honor, just on this point, the
16 defense used this very chart in its opening. So, just in terms
17 of --

18 THE COURT: With that heading?

19 MR. MASTER: Well, they said these are the referrals
20 that Sheldon Silver got from Dr. Taub. They actually -- they
21 used the 48 referrals, they used this information because we
22 had provided it to the defense well before trial and they in
23 fact embraced it. So, you know, again, it is very surprising.

24 MR. SHUR: Judge, just to clarify the record. The
25 exhibit that was used in opening was a different chart, it was

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1 actually made by the defense and while it --

2 THE COURT: But did it use the 48 number?

3 MR. SHUR: Well, it included the number and it was
4 described as this is the government's allegation. We didn't
5 embrace it or concede it. It actually had a different title.
6 We did not use the same title that was on --

7 THE COURT: What was the title?

8 MR. SHUR: I would have to go and --

9 THE COURT: Okay. Snap-a-doodle.

10 MS. COHEN: Your Honor, it is the same 48 number which
11 is the relevant issue here.

12 MR. COHEN: I don't have a problem with the number,
13 your Honor, if it is not the Taub's referring.

14 MR. SHUR: We can publish it, your Honor. And I don't
15 believe, again, in the defense's opening, that there was a
16 concession of any kind, it was simply this is what the
17 government has alleged.

18 MR. MASTER: I don't think that's accurate. I think
19 that they embraced this number and, again, it states Taub
20 patients choosing Weitz & Luxenberg and it was specific to
21 Sheldon Silver at Weitz & Luxenberg. These are the exact same
22 numbers again reflecting that the defense has had this
23 information, the government's summary charts, for quite some
24 time and this is not an issue that we thought would be
25 contested at all because, again, it was embraced by the

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1 defense.

2 THE COURT: Mr. Master, you have made that point.

3 MR. MASTER: I got it.

4 THE COURT: I agree with you that I am not happy with
5 how the defense is handling this. That only gets you so far.
6 It gets me annoyed but doesn't ultimately end the ruling
7 because the chart needs to be right as to what the evidence is
8 or I have to be persuaded that it is right enough that the
9 defense can make their points and the government can make your
10 points.

11 MR. COHEN: Your Honor, the next one is --

12 THE COURT: Do you remember when in the opening it
13 was?

14 MR. GOLDSTEIN: Your Honor, page 55 of the transcript.

15 THE COURT: Well, thank you.

16 It is all cast in terms of this is what the government
17 says.

18 Okay, what is your other issue, Mr. Cohen?

19 MR. COHEN: Exhibit 1514 refers to that pie chart pink
20 thing as Weitz & Luxenberg Taub fees.

21 THE COURT: Well --

22 MR. COHEN: And up on the left-hand corner, too.

23 THE COURT: What is that? I'm not quite sure, what
24 does the top line on 1514 mean?

25 MR. COHEN: It is not the top line, over to the right

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1 where it says --

2 THE COURT: It is over to the left, you mean?

3 MR. COHEN: On the right it says where the little pink
4 dot there Weitz & Luxenberg Taub fees.

5 THE COURT: It is on both sides.

6 MS. COHEN: Correct, your Honor.

7 THE COURT: What does that mean? What does that line
8 represent, Mr. Master?

9 MR. MASTER: Yes. So again, Special Agent Pennetta
10 will testify that as a result of the database activity --

11 THE COURT: Yeah, yeah, yeah, yeah.

12 MR. MASTER: She was able --

13 THE COURT: Is that all? Is that 100 percent -- does
14 the red represents all Weitz & Luxenberg? No, it is all
15 Silver's -- the pie chart is all of Silver's money from
16 Weitz & Luxenberg of which 75.3 percent reflects asbestos
17 patients of Taub?

18 MR. MASTER: Yes.

19 THE COURT: That one seems unobjectionable.

20 MR. COHEN: Okay. 1507, the numbers at the top are
21 Weitz & Luxenberg Taub fees.

22 THE COURT: That, again, would be Weitz & Luxenberg
23 fees for Taub patients. That does not seem objectionable, even
24 under your theory.

25 MR. COHEN: Okay. And on the middle on the right it

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1 says Taub fees, the first of those five or six insets on the
2 right.

3 THE COURT: Again, that's Weitz & Luxenberg Taub fees
4 so those are fees to Weitz & Luxenberg from Taub patients?

5 MR. COHEN: Taub patients, right.

6 THE COURT: So there is nothing problematic about that
7 labeling.

8 MR. COHEN: I think the others -- same problem on
9 1515, your Honor, the last one, Weitz & Luxenberg Taub fees,
10 same header there.

11 THE COURT: Again, those are fees that Mr. Silver
12 received of Taub patients, right? You have got your argument
13 that not all of them -- I can't imagine -- with all due
14 respect, I can't imagine that Weitz & Luxenberg is going to pay
15 Sheldon Silver a referral fee for a case that he didn't bring
16 in. Now, if your theory is he may have brought in some Taub
17 patients external to anything that Taub did --

18 MR. COHEN: Without a referral.

19 THE COURT: -- you can make your argument, but this
20 doesn't in any way suggest anything to the contrary.

21 MR. COHEN: That's fine, I suppose, your Honor, if the
22 government is not going to use those charts to suggest the
23 opposite of what your Honor just said.

24 THE COURT: Oh, they're going to argue till the cows
25 come home that every one of these was referred by Taub to

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1 Silver because Silver didn't have any other way to get these
2 mesothelioma patients and that his -- Taub's testimony was
3 about -- I didn't count, I don't know how many cases are all
4 there, I presume it is something north of 20 -- but, having
5 seen Dr. Taub testify you can make your argument that he said
6 20, this is 45, the government hasn't proven that every single
7 one of these patients came Taub to Silver to Weitz & Luxenberg.

8 MR. COHEN: Well, the problem is this document, which
9 is going to be large in the jury room, they're going to use to
10 say this has been carved in stone. These are patients
11 referrals from Dr. Taub to Mr. Silver and that's what we are
12 concerned about.

13 THE COURT: Again, this label I don't think creates
14 that problem. The only one that I see that arguably creates
15 that problem is the first one which is 1509.

16 MR. COHEN: I hear you, your Honor. We are not
17 completely satisfied with what your Honor has done. We are
18 grateful for what you are doing on the first exhibit and I'm
19 sorry for having brought this to you --

20 THE COURT: So, your other objections are overruled.
21 The objection as to 1509 is sustained but I'm not going to stop
22 the witness.

23 So, in other words, what you are going to have to do,
24 Mr. Master, is essentially explain that the title is going to
25 be changed but that otherwise the chart is going into evidence.

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1 Had this been raised earlier this could have been done
2 before today but it wasn't and so that's how we are going to
3 deal with it because I'm not stopping the train for this.

4 MR. COHEN: I hear you.

5 THE COURT: Okay.

6 MR. MASTER: Your Honor, what is the title that your
7 Honor is going to pose?

8 THE COURT: I have a very clever title for it. I
9 don't remember exactly, something like Taub patients for which
10 Silver received referral fees.

11 You are sure you want that change, defense?
12 Personally it seems a little worse to me, but that's your
13 tactical decision. We will say "Taub patients for which Silver
14 received referral fees."

15 MR. MASTER: Yes, your Honor.

16 (Counsel conferring)

17 MR. MASTER: Actually, your Honor, there is one --
18 withdrawn.

19 (Counsel Conferring)

20 MR. COHEN: We prefer your Honor's proposed change.

21 THE COURT: Okay. Got it?

22 MR. MASTER: Yes, your Honor.

23 THE COURT: Okay. Seriously gentlemen, and Ms. Cohen,
24 are there any other issues of this nature that are going to
25 interrupt the testimony between now and when the government

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Pennetta - direct

1 stands up and says the government rests?

2 MS. COHEN: I cannot speak for the defense. I can
3 tell you that Joel Cohen provided us with one chart that we
4 went over with him and we do not expect any objections because
5 we told him what our problems were ahead of time.

6 THE COURT: And you think he --

7 MR. COHEN: This is a bouquet from Ms. Cohen that is
8 really unusual.

9 THE COURT: It had some dandelions in it, though.

10 Anything else from the defense? To the extent you are
11 going to try to use exhibits with this special agent, the
12 government has seen them, you made the fixes that the
13 government asked for?

14 MR. COHEN: Yes. We are fine, your Honor. Thank you.

15 THE COURT: Okay. There is going to be blood on the
16 floor if that's not true.

17 MS. COHEN: Your Honor, if we could just have a minute
18 to explain the title change to the agent so there is no
19 confusion on the record about it that is detrimental?

20 THE COURT: Yes.

21 MS. COHEN: Thank you.

22 THE COURT: Anything further? I realize that y'all
23 aren't getting an afternoon break. Let's bring the jury back
24 in.

25 I really -- I really -- would like the government to

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1 rest today.

2 MS. COHEN: We are prepared to do so, your Honor.

3 THE COURT: How much longer do you think you have with
4 her, Mr. Master?

5 MR. GOLDSTEIN: We would like the defense to rest
6 today.

7 THE COURT: Me too.

8 MR. MASTER: We have maybe half an hour, 45 minutes.

9 THE COURT: Maybe you can shorten some of this. I
10 think, you know --

11 MS. COHEN: He will try his best, your Honor.

12 THE COURT: I realize the phone records took a little
13 longer I think than this will, right?

14 MR. MASTER: Exactly; and then there is the 1957 count
15 that we have to trace the funds.

16 MS. COHEN: We have to trace the money.

17 THE COURT: Okay. The note from the jury says the
18 projector is off and they can't see all of the records on the
19 projection screen.

20 MR. GOLDSTEIN: We fixed it.

21 THE COURT: Okay. Thank you.

22 (Continued on next page)

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1 (Jury present)

2 THE COURT: Okay, Ms. Pennetta, you are still under
3 oath.

4 Okay, so the issue is 1509, the objection is
5 overruled.

6 (Government's Exhibit 1509 received in evidence)

7 BY MR. MASTER:

8 Q. Special Agent Pennetta, can you just look at 1509?

9 And if the jury could just turn in their binders to
10 1509?

11 Just for the record, the title of this chart is going
12 to be modified to state the following, and it will be replaced
13 in the admitted exhibits with this title: Taub Patients for
14 which Sheldon Silver Received Referral Fees.

15 With that, Special Agent Pennetta, can you explain to
16 the members of the jury how you created this chart?

17 A. Yes.

18 I used the business records from Weitz & Luxenberg
19 that listed out the referral -- the referrals from Sheldon
20 Silver, it was the previous exhibit we had up here, it had the
21 client names on it and I compared that to a listing of patients
22 of Dr. Taub and for names that appeared on both lists as
23 clients of Weitz & Luxenberg and as patients of Dr. Taub. I
24 included them in this chart here. The Weitz & Luxenberg intake
25 date comes from the business records of Weitz & Luxenberg that

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1 shows the date of the referral to Weitz & Luxenberg. And the
2 fees paid to Silver summarizes the total referral fees that
3 Weitz & Luxenberg paid to Sheldon Silver for each of these
4 clients who are also patients of Dr. Taub.

5 Q. And so, the total that's on the right-hand column, for
6 example where the patient name Pieper is with intake date of
7 11/18/04 for \$461,774.57, is that the total of referral fees
8 paid in all of those referral fee reports you reviewed for that
9 particular patient of Dr. Taub?

10 A. Yes.

11 Q. And for each of these entries for which there is a number,
12 are those individuals or clients of Weitz & Luxenberg for which
13 Sheldon Silver received referral fees?

14 A. Yes.

15 Q. And what is the total referral fees obtained by Sheldon
16 Silver, paid to Sheldon Silver, for Taub patients referred to
17 Weitz & Luxenberg for which Sheldon Silver got credit?

18 A. The total referral fees he received was \$3,057,901.07.

19 Q. In addition to compiling this detailed chart with names and
20 intake dates and total dollar amounts, if you wouldn't mind,
21 Special Agent Pennetta first, turning to Government Exhibit
22 1508? Is that another chart you created based on the
23 information that you just described analyzing?

24 A. Yes, it is.

25 Q. And so, describe what you did to create this chart.

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1 A. This chart comes from the list of patients of Dr. Taub as
2 well as the referrals to Weitz & Luxenberg, and this just
3 shows, categorizes by year. It shows that in 2003 there was
4 one patient of Dr. Taub's who Sheldon Silver referred to
5 Weitz & Luxenberg as a client of theirs for which he received
6 referral fees.

7 Q. Is it a fair and accurate summary of the information that
8 you analyzed?

9 A. Yes.

10 MR. MASTER: The government offers Government Exhibit
11 1508.

12 MR. COHEN: I have no objection beyond what was stated
13 at the bench, your Honor.

14 THE COURT: Okay, and that was overruled, so 1508 is
15 received.

16 (Government's Exhibit 1508 received in evidence)

17 BY MR. MASTER:

18 Q. There is a table on the left-hand side of the bar chart.
19 Is the same data reflected in both charts?

20 A. Yes, it is.

21 Q. So the left-hand side is the actual numbers?

22 A. Yes.

23 Q. And what's the total count?

24 A. 48.

25 Q. And then on the right-hand side there is what is known as a

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1 bar chart, and just for the members of the jury who haven't
2 seen this type of chart before, can you just explain what it
3 is?

4 A. This just depicts the same thing that's in the chart to the
5 left. So, the years are listed across the bottom horizontally
6 and vertically is the number of patients, so you will see that
7 in 2003 there was one patient, and if you look at the
8 corresponding chart on the left you see that 2003 there was one
9 patient, you can follow along. 2004 there were six patient
10 referrals. And that is the same that is in the chart to the
11 left.

12 Q. Now, did the referral fee reports that you included in your
13 database include referral fees paid for clients other than
14 those who you were able to determine were patients of Dr. Taub?

15 A. Yes, they did.

16 Q. How did you categorize referral fees paid on those other
17 cases that you were not able to establish were patients of
18 Dr. Taub?

19 A. In my analysis and summary charts I called them
20 Weitz & Luxenberg other fees.

21 Q. And as part of your analysis, did you prepare a summary of
22 all Weitz & Luxenberg referral fees that you were able to
23 confirm were actually paid to Sheldon Silver broken down by
24 fees for referrals of Dr. Taub patients versus fees for all
25 other cases?

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1 A. Yes, I did.

2 Q. Is that what is reflected in your binder at Government
3 Exhibit 1514?

4 A. Yes, it is.

5 Q. Is that a fair and accurate summary of your analysis?

6 A. Yes, it is.

7 MR. MASTER: The government offers Government Exhibit
8 1514.

9 THE COURT: No objection; Government Exhibit 1514 is
10 received.

11 (Government's Exhibit 1514 received in evidence)

12 BY MR. MASTER:

13 Q. If you can turn to that? It is the next one in the jury's
14 binder? If you can explain to the jury what is reflected in
15 this chart?

16 A. This shows the different types of referral fees that
17 Sheldon Silver received from Weitz & Luxenberg.

18 As we have already discussed, there were referral fees
19 for patients, Dr. Taub and that's the chart on the left that
20 shows the \$3 million number, that's the same as the previous
21 chart we just looked at and, as we just explained, the other
22 fees includes all other referral fees that Sheldon Silver
23 received from Weitz & Luxenberg for clients that were not
24 patients of Dr. Taub. And then, to the right, there is a
25 corresponding pie chart for just a visual of the different

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1 types of fees.

2 Q. Does the visual also break down the percentage of total
3 fees, referral fees paid to Sheldon Silver that are Dr. Taub
4 patients versus all other sources?

5 A. Yes, it does.

6 Q. And what are the percentages?

7 A. For Dr. Taub patients Sheldon Silver received -- of the
8 total referral fees from Weitz & Luxenberg that Sheldon Silver
9 received, 75.3 percent were from patients of Dr. Taub and 24.7
10 percent were from all other cases.

11 Q. Now, before we move on this states: Weitz & Luxenberg
12 referral fees 2005 to 2014. Why did you start in 2005?

13 A. That was the date of the first referral fee check that
14 Sheldon Silver received.

15 Q. And is that what we just looked at 514-1?

16 A. Yes.

17 Q. Now, if you wouldn't mind, Special Agent Pennetta, turning
18 to your binder Government Exhibit 1507?

19 THE COURT: Jury, wait until we get it into evidence,
20 okay?

21 Q. Now, were you also asked to review and summarize records
22 related to Sheldon Silver's annual salary at Weitz & Luxenberg?

23 A. Yes, I was.

24 Q. What types of records did you review?

25 A. Cancelled checks, paychecks.

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1 Q. And what, if any records, related to Sheldon Silver's New
2 York State salary, were you asked to review?

3 A. I reviewed a schedule of his annual salary from New York
4 State.

5 Q. Mr. Coccaro, if you wouldn't mind pulling up that schedule,
6 Government Exhibit 222?

7 While that's happening, in addition to that, were you
8 asked to compile in a database referral fee payments from the
9 Goldberg firm to Sheldon Silver?

10 A. Yes, I was.

11 Q. And if you wouldn't mind just taking a look in your binder
12 what's been marked for identification -- or I'm sorry, what's
13 already admitted into evidence as Government Exhibit 646-1 to
14 646-34 and 650-1 to 650-13? Are those the Goldberg referral
15 fee records that you reviewed?

16 A. Yes, they are.

17 Q. Now, with all of this information were you asked to put
18 together a chart that shows dollar amounts of payments Sheldon
19 Silver received from each of those sources by year?

20 A. Yes.

21 Q. So, I would like you to take a look at Government Exhibit
22 1507. Is that the chart you were asked to prepare?

23 A. Yes, it is.

24 Q. Does it fairly and accurately represent the information on
25 the chart?

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1 A. Yes.

2 MR. MASTER: Government offers 1507.

3 THE COURT: Any objection?

4 MR. COHEN: No objection, other than what was stated
5 at side bar.

6 THE COURT: That was overruled. 1507 is received.

7 (Government's Exhibit 1507 received in evidence)

8 BY MR. MASTER:

9 Q. So now there are two charts here on -- two charts that are
10 in Government Exhibit 1507, first let's describe the top chart.

11 Mr. Coccaro, if you wouldn't mind zooming in on that?

12 You stated earlier that your database reflects fees
13 not only associated with particular clients of
14 Weitz & Luxenberg but also by year?

15 A. Yes.

16 Q. And so, were you able to actually compile referral fees by
17 source for each of the years 2005 to 2014?

18 A. Yes.

19 Q. And so, is that what's reflected in the first two columns,
20 that is, the Taub fees and the Weitz & Luxenberg other fees?

21 A. Yes.

22 Q. And so, are those totals that are listed there the same
23 ones that are listed in the prior exhibit, that pie chart?

24 A. Yes, they are.

25 Q. Then there is also another column, Goldberg fees. Are

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Pennetta - direct

1 those fees that you were able to confirm or actually pay to
2 Sheldon Silver for those years by the Goldberg firm?

3 A. Yes.

4 Q. That's that column.

5 Then there is NYS salary; what does that column
6 reflect?

7 A. That shows Sheldon Silver's salary from New York State as
8 reflected in the schedule.

9 Q. And then the final column, W & L salary; what is that?

10 A. That is Sheldon Silver's annual salary for
11 Weitz & Luxenberg -- from Weitz & Luxenberg.

12 Q. And then there is a final column there where it lists
13 totals. What is the totals column?

14 A. The total summarizes all the previous columns; it includes
15 the referral fees from Weitz & Luxenberg for Dr. Taub patients
16 and all other clients, the referral fees from the Goldberg
17 firm, Sheldon Silver's New York State salary, as well as his
18 salary from Weitz & Luxenberg.

19 Q. And then there is a bottom row that says total. Is that
20 the total for a particular source for each, for all years that
21 are reflected in your chart?

22 A. Yes. That row is totaled by source as well as a total of
23 the total column.

24 Q. Then there is a bar chart beneath. If you would just
25 explain for the members of the jury what is reflected in that

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1 chart?

2 A. This is just a visual of the chart directly above it. It's
3 color-coded to make it a little easier to understand.

4 So, the first, the red one is Weitz & Luxenberg Taub
5 fees that we have already discussed and so that shows that in
6 2005 it was just shy of \$300,000. And if you refer back to the
7 chart above, you can see that in 2005 the actual dollar amount
8 of referral fees that Sheldon Silver received was \$282,152.36.
9 And it goes like that for each year. So, if you follow the red
10 lines, that's the dollar amount corresponding on the left-hand
11 vertical axis of fees that Sheldon Silver received for patients
12 of Dr. Taub. The next one is the green line is for other
13 referral fees that Sheldon Silver received from
14 Weitz & Luxenberg. The orange is fees from the Goldberg firm.
15 The blue is his New York State salary. And the purple is
16 Sheldon Silver's salary from Weitz & Luxenberg.

17 Q. Now, it states in this chart or the title of this chart is
18 fees paid to -- I'm sorry -- Sheldon Silver combined year. For
19 Weitz & Luxenberg Taub fees, Weitz & Luxenberg other fees and
20 Goldberg fees, did you only include information in this chart
21 if you could confirm that these fees were actually paid to
22 Sheldon Silver?

23 A. Yes. I only included referral fees that I was able to
24 trace back that were actually deposited into his bank account.

25 Q. In your review of business records of Weitz & Luxenberg and

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1 the Goldberg firm, were there other business records that
2 reflected additional fees that were paid or that appeared to
3 have been paid or might have been paid to Sheldon Silver but
4 for which you weren't able to confirm a corresponding deposit
5 in the bank account?

6 A. Yes. The business records reflected some additional
7 referral fees owed to Sheldon Silver but I was not able to
8 trace those certain dollar amounts to confirm that they were
9 actually deposited into his bank account. So, those numbers
10 are not included on this chart.

11 Q. I would like you to take a look at what is in your binder
12 as Government Exhibit 1515. What is reflected in this chart?

13 A. This shows the total referral fees that were both paid and
14 what I call accrued, meaning according to the business records
15 these were fees owed to Sheldon Silver, but this is the amount
16 I was not actually able to trace into the bank account and the
17 categories are the Weitz & Luxenberg Taub patient referrals,
18 other fees for Weitz & Luxenberg and referral fees for the
19 Goldberg firm.

20 Q. And does it fairly and accurately represent your review of
21 these business records?

22 A. Yes.

23 MR. MASTER: The government offers Government Exhibit
24 1515.

25 MR. COHEN: Same objection, your Honor.

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1 THE COURT: Same ruling.

2 1515 is received.

3 (Government's Exhibit 1515 received in evidence)

4 BY MR. MASTER:

5 Q. I am not sure if it is in the jury's binders so if you
6 wouldn't mind displaying it?

7 In the paid column, is that the information that you
8 were able -- I don't believe it is in the jury's binders. My
9 apologies to the jury but it is up on the screen. And so, for
10 this one, what were you able, the paid column, is that the same
11 information that's in Government Exhibit 1507?

12 A. Yes. Those numbers correspond to the previous exhibit.

13 Q. And then there is this new column called Accrued. Are
14 those additional fees that the business records reflect were
15 owed to Sheldon Silver?

16 A. Yes. Those are the additional fees that were owed to
17 Sheldon Silver that I was not able to confirm were deposited
18 into his bank account.

19 Q. And so, for example, with respect to the Goldberg fees, how
20 much additional accrued fees were you able to determine from
21 the business records were owed to Sheldon Silver?

22 A. It was an additional \$153,408.26.

23 Q. So, if you were to include both the ones you were able to
24 trace into a bank account and these other ones that you were
25 able to -- that were reflected in business records how much, in

FBI5sil5

Pennetta - direct

1 total, in Goldberg fees, were either paid or owed to Sheldon
2 Silver?

3 A. \$835,315.72.

4 Q. Are there additional amounts that you were able to see in
5 the Weitz & Luxenberg records that were accrued to Sheldon
6 Silver for both Taub and others?

7 A. Yes.

8 Q. We can set that aside.

9 Now, let's turn to a final category of data that you
10 reviewed.

11 Did there come a time when you were provided records
12 for an HSBC account in the name of Sheldon Silver, counselor at
13 large, Sheldon Silver, Esquire for the account number
14 6460414943?

15 A. Yes.

16 MR. MASTER: Those are records, your Honor, previously
17 introduced into evidence by stipulation as Government Exhibit
18 1229.

19 THE COURT: 1249?

20 MR. MASTER: 1229.

21 THE COURT: 1229.

22 BY MR. MASTER:

23 Q. If you wouldn't mind describing for the members of the jury
24 what records associated with that account you were able to
25 obtain and review?

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1 A. These were bank records so it included things like bank
2 statements; copies of checks both checks that were written from
3 the account and deposits so checks that were deposited into the
4 account as well as deposit slips.

5 Q. And what did you and others who worked with you do with
6 those 4943 account records?

7 A. We created another database that included all of the
8 information regarding each transaction in the bank statements
9 to include things like the item descriptions, the dollar
10 amounts, the dates, and any other information that was
11 included.

12 Q. Now, were the Weitz & Luxenberg and Goldberg fee checks
13 that you saw, based on your review of business records that you
14 have just described, deposited into those 4943 -- the 4943
15 account?

16 A. Yes, they were.

17 Q. And how about the New York State salary? Was that
18 deposited into this account?

19 A. No. That was deposited into a different account.

20 Q. In summary, what were the largest sources of deposit into
21 the 4943 account during the period that you reviewed?

22 A. The largest were referral fees from Weitz & Luxenberg.

23 Q. And again, were the Goldberg fees also deposited into that
24 account?

25 A. Yes.

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Pennetta - direct

1 Q. Were you asked to perform a more detailed analysis of
2 certain payments or disbursements made from that 4943 account
3 to entities called Counsel Financial and JoRon Management?

4 A. Yes, I was.

5 Q. And what did you do to analyze those disbursements?

6 A. I looked at -- I started with the disbursement from the
7 4943 account and I traced the transactions backwards in time --
8 I traced the deposits backwards in time until I reached a
9 number that was at least as great as the disbursement, if that
10 makes sense.

11 Q. And did you exclude any smaller transactions from that
12 exercise?

13 A. Yes. I set a scope limitation of \$1,000. So, in my
14 analysis I only included deposits into the 4943 account
15 immediately preceding the selected disbursements that were
16 greater than \$1,000.

17 Q. When there were multiple deposits on the same date, what
18 did you do?

19 A. I included all of them because I was not able to determine
20 which items were deposited first.

21 Q. And so we will explain what you did in more detail in a
22 moment, but for now take a look at Government's Exhibits 1511,
23 1512, and 1513. Are those charts that you prepared based on
24 the analysis of JoRon and Counsel transactions that you were
25 just describing?

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Pennetta - direct

1 A. Yes, they are.

2 Q. Do they fairly and accurately summarize your analysis?

3 A. Yes, they do.

4 MR. MASTER: The government offers Government's
5 Exhibits 1511, 1512 and 1513.

6 MR. COHEN: No objection. I'm sorry.

7 THE COURT: Okay, 1511, 1512 and 1513 are received.

8 (Government's Exhibits 1511, 1512 and 1513 received in
9 evidence)

10 BY MR. MASTER:

11 Q. If you wouldn't mind turning to 1511 first? So now let's
12 start with the scope of your analysis. What's the title of
13 this chart?

14 A. Payments Greater than \$10,000 to Counsel Financial and
15 JoRon Management from 4943 account 2010 to 2014: Source
16 Information.

17 Q. And why is that the scope of the chart?

18 A. The disbursements I tracked in this chart were the ones
19 that were listed in the indictment.

20 Q. So, with respect to these particular transactions listed in
21 the indictment you have transaction numbers listed on the left.
22 Just describe for the members of the jury what those
23 transaction numbers represent?

24 A. Each transaction number corresponds to a disbursement so,
25 for example, the first transaction 1 includes the deposits

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1 greater than \$1,000 immediately preceding the disbursement
2 that's highlighted in orange.

3 Q. So let's just walk through a couple of these as examples
4 and then there is a couple of additional charts that provide
5 additional detail that we will go into.

6 So, first with respect to transaction 1, Mr. Coccaro,
7 would you mind pulling up page 1948 of Government Exhibit 1229
8 and just zoom in on that?

9 Now, at the bottom of this transaction number there is
10 an entry that is listed in or that is colored in orange, red,
11 and that's a disbursement in the amount of \$100,000. What is
12 reflected here on your screen? Is that the disbursement that
13 is reflected in your chart?

14 A. Yes. That's a copy of the check.

15 Q. And so, again, what did you do to track back, track back or
16 trace source information for the funds that were used to fund
17 that check?

18 A. So I began, as I stated earlier, I began with the
19 disbursement so in this first transaction no. 1 I started on
20 8/12/2010 and reviewed the bank records and worked backwards in
21 time and I listed out all deposits greater than \$1,000 that
22 were immediately preceding this \$100,000 disbursement. And I
23 continued listing deposits until the total deposits into the
24 account totaled at least \$100,000.

25 Q. Now, there are four deposits preceding that \$100,000

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Pennetta - direct

1 disbursement that are listed there. If you wouldn't mind just
2 explaining what is reflected in this chart concerning the
3 source of those deposits?

4 A. The first and the last deposit into the account with dates
5 of 7/22/2010 and 8/5/2010 are payroll checks that Sheldon
6 Silver received from Weitz & Luxenberg. And the middle two
7 dated 7/22/2010 and 7/30/2010 are referral fee checks that
8 Sheldon Silver received from Weitz & Luxenberg, and based on
9 the referral fee reports that I have from the business records
10 from Weitz & Luxenberg I was able to determine that the
11 clients, for which these referral fees were paid, were also
12 patients of Dr. Taub. And so, that's the W & L Taub fees
13 description to the far right.

14 Q. And so, 100 percent of the fees or of the referral fee
15 check that are listed there are from the Taub patients?

16 A. Yes.

17 Q. And Mr. Coccaro, if you wouldn't mind pulling up again
18 Government Exhibit 1229, page 1938, just to reflect the
19 deposit?

20 While we wait, just returning to this chart, 1511, did
21 each of your -- did each of these transactions follow the -- I
22 mean, did your analysis proceed the same way with respect to
23 each of these transactions?

24 A. Yes. For each transaction I began with the selected
25 disbursements which are the ones that were listed in the

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Pennetta - direct

1 indictment and I traced deposits greater than \$1,000 into the
2 account immediately preceding the disbursement.

3 Q. And so, let's set aside transactions 2 and 7 for the moment
4 which are referenced in greater detail in 1512 and 1513, but
5 for transaction 3, the disbursement is it a JoRon Management.
6 Is there a description there?

7 A. Yes. The description on the check was "capital call Clover
8 Com II."

9 Q. And again, what source information were you able to
10 determine, based on your review of these records?

11 A. I was able to determine that there were a number of payroll
12 checks from Weitz & Luxenberg and that there were -- there was
13 a referral fee check from the Goldberg firm with regards to a
14 property of Glenwood Management and there were also referral
15 fees from Weitz & Luxenberg for both for patients of Dr. Taub
16 and for other clients that were not related to Dr. Taub.

17 Q. With respect to this one at least, when you say other fees,
18 is that the \$2.17?

19 A. Yes. I broke out the detail to the far right. So, there
20 was one referral fee check for \$8,235.72. Of that total
21 \$8,233.55 related to patients of Dr. Taub and \$2.17 related to
22 other referral fees for other clients that were not patients of
23 Dr. Taub.

24 Q. Mr. Coccaro, you don't need to put up 1513.

25 With respect to transaction 4, with respect to the

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Pennetta - direct

1 outflow, is that also a transaction to JoRon Management?

2 A. Yes. The disbursement is \$33,668.58 to JoRon Management,
3 LLC.

4 Q. And again, you provided source information with respect to
5 the sources from Weitz & Luxenberg other than the payroll
6 payments. Were all of the fee checks associated with Taub
7 patients?

8 A. Yes, they were.

9 Q. And then with respect to transaction 5, did you observe a
10 \$50,000 outflow from the HSBC account to JoRon Management
11 posted on February 22nd, 2013?

12 A. Yes, I did.

13 Q. And again, with respect to the source information, what
14 types of sources did you observe for that disbursement?

15 A. There were two payroll checks from Weitz & Luxenberg.
16 There was also a deposit from a flex spending account. And
17 then there were numerous referral fee checks from the Goldberg
18 firm related to a client Glenwood Management, and there was
19 also a referral fee check from Weitz & Luxenberg where a
20 portion related -- of that referral fee check related to
21 patients of Dr. Taub and a portion related to other clients.

22 Q. And again, with respect to the breakdown, is it fair to say
23 that of that \$69,755.39 check, all but \$26.90 were for Taub
24 patients?

25 A. Yes.

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Pennetta - direct

1 Q. And transaction 6, which was a \$19,000.05 disbursement to
2 JoRon Management, again, what source information were you able
3 to determine for that?

4 A. There was one payroll check from Weitz & Luxenberg and
5 there was also one referral fee check from Weitz & Luxenberg.
6 This referral fee check also included multiple clients. Of the
7 \$27,281.37 check, \$27,278.06 related to clients that were also
8 patients of Dr. Taub and \$3.31 related to other clients.

9 Q. Now, there are two other transactions listed here that have
10 asterisks next to them and are those the subjects of
11 Government's Exhibits 1512 and 1513?

12 A. Yes.

13 Q. And so, for transaction 2, is that the subject of
14 Government Exhibit 1512?

15 A. Yes.

16 Q. Based on your review, and if you wouldn't mind turning to
17 Government Exhibit 1512, this is the second transaction that is
18 listed in the indictment. Under transaction 2 where it says
19 disbursements to JoRon Management which there are two
20 disbursements to JoRon Management, what was the immediate
21 source that you were able to determine based on your review of
22 the bank records?

23 A. I used the same process I described.

24 So, the deposits into the account immediately
25 preceding the two JoRon Management disbursements were greater

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Pennetta - direct

1 than \$1,000; two were from Dreyfus and one was a referral fee
2 check from Weitz & Luxenberg.

3 Q. And is that a Dreyfus investment account in the name of
4 Sheldon Silver?

5 A. Yes, it is.

6 Q. Now, when you reviewed those bank records were you also --
7 the same 4943 bank records -- did you actually see a
8 disbursement from the 4943 account into that same Dreyfus
9 account before the checks were written from Dreyfus to the 4943
10 account?

11 A. Yes.

12 Q. And so, is that what's depicted in Government Exhibit 1512?

13 A. Yes.

14 Q. And so, in other words, the Dreyfus account that funded the
15 July 11, 2011 checks to JoRon Management that, in turn, was
16 funded by fees from the 4943 account?

17 A. Yes.

18 Q. And so, Mr. Coccaro, if you wouldn't mind pulling up
19 Government Exhibit 1229, page 1986?

20 And while we wait for that, so that you observed a
21 disbursement to that same Dreyfus account in the amount of
22 \$150,000, correct?

23 A. Yes; on September 30th, 2010.

24 Q. Is that the check -- if you wouldn't mind zooming in,
25 Mr. Coccaro?

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Pennetta - direct

1 Is that the check that came out of the 4943 account
2 that went into this Dreyfus account?

3 A. Yes.

4 Q. And how did you analyze the source of that check?

5 A. I used the same logic that I did for the others. I started
6 with this check and this date and I traced deposits going back
7 in time, deposits into the 4943 account greater than \$1,000 and
8 listed them out until I reached a minimum of the \$150,000
9 disbursement.

10 Q. And what did you determine once you used that methodology
11 looking at the source of that check?

12 A. There were some payroll checks from Weitz & Luxenberg,
13 there were referral fee checks from the Goldberg firm related
14 to a Glenwood Management client. There were referral checks
15 from -- excuse me -- referral fee checks from Weitz & Luxenberg
16 related to patients of Dr. Taub. And, there was a deposit from
17 JoRon Management into the account as well.

18 Q. And so, with respect to this, did that source information
19 include a \$193,737.89 fee check from Weitz & Luxenberg?

20 A. Yes, it did.

21 Q. And were all of those for patients of Dr. Taub?

22 A. Yes.

23 Q. And then if you just wouldn't mind turning to Government
24 Exhibit 1511 again, and this is the last part of testimony,
25 this last transaction, transaction 7, which is a \$16,397.72

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Pennetta - direct

1 disbursement to JoRon Management. Do you see that?

2 A. Yes.

3 Q. What was the immediate source for that -- for that
4 disbursement?

5 A. There was some -- there was some deposits from One Liberty
6 Partners, SSA. There was two Weitz & Luxenberg payroll checks.
7 The majority, I guess, was funded from a deposit from Fidelity.

8 Q. Is that the source information for that Fidelity deposit
9 what's reflected in Government Exhibit 1513?

10 A. Yes, it is.

11 Q. So, Mr. Coccaro, if you wouldn't mind turning to Government
12 Exhibit 1513?

13 We will start by just working backwards on this one,
14 Special Agent Pennetta. So you were just talking about a check
15 that went from the 4943 account to JoRon Management, right?

16 A. Yes.

17 Q. Is that that downward arrow from the 4943 account to the
18 JoRon Management account?

19 A. Yes; in the center of the page dated May 29th, 2014.

20 Q. And so, you stated that the largest source of that check
21 was a \$100,000 fidelity check?

22 A. Yes.

23 Q. And what was the date that that check was posted?

24 A. May 2nd, 2014.

25 Q. Now, were you able to go back into that Fidelity account to

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Pennetta - direct

1 determine how that account was funded?

2 A. Yes. I reviewed the bank account records for the Fidelity
3 account.

4 Q. And how was that -- what was the deposit into that account
5 immediately preceding the \$100,000 check?

6 A. The deposit immediately preceding that disbursement was
7 posted on 12/31/2013 for \$250,000, and that came from a Banco
8 Popular account in the name of Arlene Lerer.

9 Q. And then on that same date, were you able to look at that
10 account as well?

11 A. Yes, I was.

12 Q. And on the same date that the check was written to the
13 Arlene Lerer Fidelity account, did you see a check being
14 deposited into that Banco Popular account?

15 A. Yes. On 12/31/2013 a check for \$100,000 was deposited from
16 the Sheldon Silver 4943 account into the Arlene Lerer Banco
17 Popular account.

18 Q. And were you able to figure out the source of that \$100,000
19 check?

20 A. Yes, I was. I traced that back, again with the same
21 methodology, deposits immediately preceding this \$100,000
22 disbursements, deposits greater than \$1,000 that totaled at
23 least \$100,000.

24 Q. And is the source information for that reflected in that
25 initial arrow that's on the left-hand side of the chart?

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Pennetta - direct

1 A. Yes. That's summarized to the left.

2 Q. And so, what were the main sources of -- what was the
3 largest source of that \$100,000 check?

4 A. The largest source was referral fees from Weitz & Luxenberg
5 for patients of Dr. Taub.

6 Q. And what was the amount of that check?

7 A. \$149,351.58.

8 Q. And just with respect, there is this name Arlene Lerer
9 listed here -- Mr. Coccaro, if you wouldn't mind just going to
10 Government Exhibit 1236, if you could pull that up and go to
11 page 162 if you are able to do so?

12 Special Agent Pennetta, while he is doing that, is
13 there any co-signer or care of information on that Arlene Lerer
14 account?

15 A. For the Banco Popular account?

16 Q. Yes.

17 A. Yes, there is.

18 Q. Who is that account care of?

19 A. Sheldon Silver.

20 Q. And so, when Sheldon Silver wrote the check from -- the
21 \$100,000 check from the 4943 account to the Banco Popular 4897
22 account he was writing a check from -- that's the deposit into
23 the Banco Popular account?

24 A. This check is the deposit into the Banco Popular account.

25 Q. And then Mr. Coccaro, if you wouldn't mind going to

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Pennetta - direct

1 Government Exhibit -- the same exhibit on page 372? Is that
2 the disbursement of \$250,000 from that same Arlene Lerer Banco
3 Popular account to the Fidelity account?

4 A. Yes, it is.

5 Q. And again, there is a name listed there on the top left.
6 If you wouldn't mind reading into the record the name and
7 address at the top left-hand side of that check?

8 A. Yes. The account is in the name of Arlene Lerer, care of
9 Sheldon Silver, Esquire, 700 Broadway, 8th floor, New York, New
10 York, 10003.

11 Q. And so, as you were tracing this back you saw the \$100,000
12 deposited into the Banco Popular account and then on that same
13 date you saw this \$250,000 going from Banco Popular to
14 Fidelity?

15 A. Yes.

16 Q. And then, as you testified earlier, you saw a few months
17 later \$100,000 going back into the 4943 account?

18 A. From the Fidelity account into the 4943 account, yes.

19 Q. And again, it's that check that ended up funding the final
20 JoRon Management outflow listed in the indictment?

21 A. Yes.

22 MR. MASTER: Just a moment, your Honor?

23 (Counsel conferring)

24 MR. MASTER: Nothing further.

25 (Continued on next page)

FBIYSIL6

Pennetta - Cross

1 THE COURT: Okay. Mr. Cohen.

2 CROSS-EXAMINATION

3 BY MR. COHEN:

4 Q. Ms. Pennetta, good afternoon. I'm Joel Cohen. I represent
5 with Mr. Silver with my colleagues.

6 We have not spoken before about this; correct?

7 A. No.

8 Q. We have not met?

9 A. No.

10 Q. Now, your testimony is your background is that of an
11 accountant; correct?

12 A. Yes.

13 Q. And that's why you were assigned by your superior at the
14 FBI to this particular matter; correct?

15 MR. MASTER: Objection.

16 THE COURT: Sustained.

17 BY MR. COHEN:

18 Q. Are you otherwise involved in the investigation that led to
19 charges against Mr. Silver?

20 A. No.

21 Q. In fact, the FBI itself is not involved with this
22 investigation other than with respect to a very minor aspect of
23 it; is that correct?

24 MR. MASTER: Objection.

25 THE COURT: Sustained.

FBIYSIL6

Pennetta - Cross

1 BY MR. COHEN:

2 Q. If I am correct, you said on direct testimony -- please
3 correct me if I'm wrong -- that you have been involved in this
4 case regarding financial records, bank statements, referral
5 reports, invoices, phone records.

6 Am I correct?

7 A. Yes.

8 Q. Have I left anything out?

9 A. I don't believe so.

10 Q. So you have not been present at any interview of any
11 witness in this case.

12 A. No.

13 Q. Your responsibilities were confined to looking at records,
14 whether they're telephone records or bank records or fee
15 referral reports and the like?

16 A. Yes.

17 Q. And you have not, in addition to not being present at any
18 interviews -- pardon me -- not being present at any interviews,
19 you have not read any of the testimony of the witnesses who
20 have testified in this trial in the last few weeks.

21 Correct?

22 A. No.

23 Q. And you have not read the debriefings by the government of
24 witnesses who were interviewed by the government; correct?

25 MR. MASTER: Objection.

FBIYSIL6

Pennetta - Cross

1 THE COURT: Overruled.

2 THE WITNESS: I have not read debriefings.

3 BY MR. COHEN:

4 Q. And you have not read the grand jury testimony of any of
5 the witnesses the government has called before the grand jury.

6 A. No, I have not.

7 Q. If you could turn to the last item that Mr. Master talked
8 about, and that is Government Exhibit 1513.

9 MR. COHEN: If I can call on Mr. Coccoaro.

10 BY MR. COHEN:

11 Q. So you prepared this chart; correct?

12 A. Yes.

13 Q. You prepared this chart as a result of looking at the bank
14 records relating to Fidelity, HSBC, and Banco Popular; correct?

15 A. Yes.

16 Q. It's on the basis of looking at those records that you
17 formed this chart?

18 A. Yes.

19 Q. Do you know who Arlene Lerer is?

20 A. No.

21 Q. Do you mean you don't know that Arlene Lerer is
22 Mr. Silver's sister?

23 MR. MASTER: Objection.

24 THE COURT: Overruled.

25 BY MR. COHEN:

FBIYSIL6

Pennetta - Cross

1 Q. I take it that you did not know that she actually lives in
2 London, which is the reason for her having an account care of
3 Mr. Silver?

4 MR. MASTER: Objection.

5 THE COURT: Sustained.

6 BY MR. COHEN:

7 Q. Are you not aware that Ms. Lerer needed a short-term loan
8 of \$100,000 which was paid back in four months by Ms. Lerer to
9 Mr. Silver?

10 MR. MASTER: Your Honor --

11 THE COURT: Sustained.

12 Ladies and gentlemen, remember. Questions aren't
13 evidence.

14 BY MR. COHEN:

15 Q. You made this chart based on looking solely at bank
16 records; correct?

17 A. Well, there were bank records -- if you look at the upper
18 left there, I also incorporated some business records to come
19 up with that information, yes.

20 Q. I'm sorry. Business records as well.

21 But not talking to Ms. Lerer or any witnesses who may
22 have known what this transaction constituted?

23 A. No. I did not speak to anybody. I simply reviewed
24 records.

25 Q. And nobody informed you of the content of any interview

FBIYSIL6

Pennetta - Cross

1 relating to that transaction.

2 A. No.

3 Q. Now, with respect to Exhibit 1509, which is a chart --

4 MR. COHEN: Mr. Coccaro, please.

5 BY MR. COHEN:

6 Q. Now, you have determined -- and this chart will be amended
7 as Mr. Master told you.

8 You have determined that these 48 individuals who were
9 patients of Dr. Taub were referred to Mr. Silver by Dr. Taub;
10 is that correct?

11 A. No. This list is patients of Dr. Taub that are also
12 clients of Weitz & Luxenberg for which Sheldon Silver was
13 credited with the referral.

14 Q. Fair enough.

15 In making the determination of what these were, you
16 looked at bank records from Weitz & Luxenberg to Mr. Silver;
17 correct?

18 A. They were copies of checks, yes.

19 Q. Copies of checks. Thank you.

20 You also looked at patient records of Dr. Taub of
21 patients of his at Columbia Presbyterian; correct?

22 A. There was a listing of patient names.

23 Q. You did not hear Dr. Taub's testimony in this courtroom?

24 A. No, I did not.

25 Q. So you would not know that Dr. Taub testified in open

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Pennetta - Cross

1 court --

2 MR. MASTER: Objection, your Honor.

3 THE COURT: Sustained.

4 Mr. Cohen, she's already testified all she knows is
5 what's in the record. She hasn't read testimony. She hasn't
6 read interviews, nothing.

7 BY MR. COHEN:

8 Q. Do you know how many patients Dr. Taub recalls having
9 referred to Mr. Silver, Weitz & Luxenberg?

10 MR. MASTER: Objection.

11 THE COURT: Sustained.

12 BY MR. COHEN: Excuse me a moment, your Honor.

13 (Pause)

14 BY MR. COHEN:

15 Q. Ms. Pennetta, you have no personal knowledge, do you, of
16 whether any of the patients listed on this exhibit were
17 referred to Mr. Silver by Dr. Taub?

18 A. I do not.

19 Q. All you have that enabled you to make this chart was
20 Columbia records and Weitz & Luxenberg and Silver bank records?

21 A. Yes.

22 MR. COHEN: Your Honor, may we approach the bench?

23 THE COURT: Okay.

24 MR. COHEN: Thank you.

25 (At the sidebar)

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Pennetta - Cross

1 MR. GOLDSTEIN: Your Honor, this is our problem with
2 the chart, your Honor. You have a witness who's testifying
3 that all she's looking at is records.

4 THE COURT: We've established that.

5 MR. COHEN: All she's looking at are records in the
6 Lerer case. They made a big deal what that chart represents.
7 She has no idea what that represented. That's true,
8 your Honor.

9 THE COURT: I don't know whether it's true or not. It
10 doesn't matter whether it's true. The point is she's a records
11 custodian. She reviewed records. I'm not going to let you use
12 her as a prop to sum up your case, which is what you're trying
13 to do.

14 My patience for that was limited at the beginning of
15 the trial. It's even lower now when we're trying to get it
16 done.

17 You've got your summation points.

18 MR. COHEN: But you're letting that document, which,
19 including the Lerer --

20 THE COURT: It's in.

21 MR. COHEN: That's the problem. You're letting that
22 document in, and you're not giving me an opportunity to
23 basically say the limitations of that document.

24 THE COURT: You have said the limitations. You have
25 established that she does not know what goes behind that. All

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Pennetta - Cross

1 she knows is that the person was a Taub patient and there were
2 Weitz & Luxenberg fees paid to Silver.

3 You can't use -- I'm not going to allow you to use her
4 as a prop. If you want to put on a summary witness to say
5 something different, then the defense can do that.

6 I'm not going to allow you to use this witness as a
7 prop to start your summation process. The same with Lerer. I
8 don't know if you're right, that what that was was a loan and
9 this and that. It doesn't matter.

10 MR. SHUR: Judge, I just want to put on the record,
11 because I understand that the government shortly before trial
12 reached out to the money management for Mr. Silver, Hugh
13 Johnson in upstate New York, and the money manager reached out
14 to us to seek consent about providing information about
15 Mr. Silver's account because this wasn't pursuant to a
16 subpoena.

17 We gave consent. I understand that the Fidelity money
18 manager explained to the government the same thing that they
19 explained to me, which was that -- I see shaking heads of no,
20 but I'm going to put this on the record because this was what
21 was represented to me.

22 THE COURT: I'm going to kill you all. I told you,
23 when the jury was out of the room, to raise anything else.
24 This was not raised.

25 MR. SHUR: This relates to the government's summation,

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Pennetta - Cross

1 not this exhibit.

2 THE COURT: Then we're not talking about it.

3 MR. SHUR: That's fine, Judge.

4 THE COURT: Go back to your chairs. Finish your
5 cross.

6 (In open court)

7 BY MR. COHEN:

8 Q. Ms. Pennetta, please take a look at 1502.

9 MR. COHEN: Mr. Coccaro, please.

10 BY MR. COHEN:

11 Q. Now, during your direct examination, Ms. Pennetta,
12 Mr. Master asked you a lot of questions about these phone
13 records.

14 Correct?

15 A. Yes.

16 Q. And you said you added up the phone records from
17 Mr. Meara's phones to Mr. Silver and vice versa; correct?

18 A. Yes.

19 Q. And Mr. Luxenberg back and forth?

20 A. Yes.

21 Q. And Mr. Levy?

22 A. Yes.

23 Q. And Mr. Goldberg?

24 A. Yes.

25 Q. And Mr. Goldberg it reflects that there were roughly 27

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1 calls during the period which amounts to how many years?

2 A. So just about five years, six years, from December of 2009
3 through January of 2015.

4 Q. How about on the other phone?

5 A. There were none over ten years.

6 Q. With respect to Mr. Goldberg, are you aware that he's been
7 sort of a lifelong friend of Mr. Silver?

8 MR. MASTER: Your Honor.

9 THE COURT: Sustained.

10 She doesn't know anything that's not in the records.

11 BY MR. COHEN:

12 Q. Is that accurate? You know nothing except what's in the
13 records?

14 A. This is true.

15 THE COURT: I'm sure she knows lots of other things
16 that are not in the records.

17 MR. COHEN: Fair enough, your Honor.

18 THE COURT: But as is pertinent.

19 BY MR. COHEN:

20 Q. With respect to all of these phone calls that you
21 identified over the course of your direct testimony, you have
22 no idea what those phone calls are about; correct?

23 A. That's true.

24 Q. You wouldn't know whether Mr. Meara is calling Mr. Silver
25 to talk about a sporting event, whether Barack Obama is going

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Pennetta - Cross

1 to defeat Mitt Romney, whether Mr. Meara should bring a cup of
2 coffee for an event that they are going to.

3 Correct?

4 MR. MASTER: Your Honor, objection.

5 THE COURT: Overruled.

6 That's going to be it; right?

7 MR. COHEN: I assume she's going to say no to all of
8 those.

9 BY MR. COHEN:

10 Q. Ms. Pennetta?

11 A. I do not know the subject of the conversations.

12 Q. On any of the conversations that you identified as
13 occurring between each other.

14 MR. MASTER: I thought he said he was done,
15 your Honor.

16 THE COURT: Yes. Me too.

17 THE WITNESS: On any of the conversations of the phone
18 calls here, no.

19 BY MR. COHEN:

20 Q. So you are basically a records custodian who's put the
21 records together and put charts together; is that correct?

22 MR. MASTER: Objection.

23 THE COURT: I think it might be more accurate to call
24 her a records summary witness as opposed to a custodian.

25 MR. COHEN: Fair enough.

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Pennetta - Cross

1 BY MR. COHEN:

2 Q. You're a records summary witness?

3 A. Yes.

4 Q. That was a good call, Ms. Pennetta.

5 (Pause)

6 BY MR. COHEN:

7 Q. Let me show you Defendant's Exhibit 247.

8 Have you seen this before?

9 A. No.

10 Q. Please take a look at it.

11 (Pause)

12 BY MR. COHEN:

13 Q. Do you have an idea of what the percentage of fees that
14 Mr. Silver received from Weitz & Luxenberg as compared to the
15 percentage of fees -- rather, the fees that he received from
16 the Golberg & Iryami firm?

17 A. A percentage of what total?

18 Q. How much he received from Weitz & Luxenberg in a given year
19 as opposed to how much he received from Golberg & Iryami.

20 A. I don't know percentage-wise, but one of the exhibits I did
21 shows the dollar amount differences, but I don't know
22 percentage-wise what that is.

23 Q. And you have not attempted to figure out the percentage for
24 those; correct?

25 A. No.

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Pennetta - Cross

1 (Pause)

2 MR. COHEN: I have no further questions, your Honor.

3 THE COURT: Any redirect?

4 MR. MASTER: None, your Honor.

5 THE COURT: Okay. Terrific.

6 Thank you, Agent Pennetta.

7 THE WITNESS: Thank you.

8 (Witness excused)

9 THE COURT: Can I see the parties for just a second.

10 (At the sidebar)

11 THE COURT: Are you ready to rest?

12 MS. COHEN: Yes. We're just going to ask that several
13 exhibits be moved in. Then we will rest.

14 They know that.

15 MR. SHUR: Judge, before the witness started testimony
16 again, Ms. Cohen handed me an exhibit. It's not for my
17 witness. I just can't accept it.

18 THE COURT: My question was whether I need to move the
19 jury out of the room for a minute and let you get your ducks in
20 a row and make sure a bunch of the exhibits from your bank
21 subpoena stipulation haven't been moved into evidence.

22 MS. COHEN: Correct. I believe they were all moved in
23 through Paul Cody or JoRon.

24 THE COURT: They may be; they may not be. I just want
25 to give you time to make sure that you have everything that you

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Pennetta - Cross

1 think you've got into evidence into evidence.

2 I'm going to send them out for a brief break. Okay?

3 MS. COHEN: Thank you, your Honor.

4 MR. SHUR: Thank you, Judge.

5 (In open court)

6 THE COURT: Okay. Ladies and gentlemen, we're going
7 to take a brief break. This is a little unusual time. Don't
8 discuss the case. We are going to be bringing you back in. I
9 know that I told you that we might leave early today. It
10 doesn't look like that's going to happen.

11 But you're still going to have tomorrow, Thursday, and
12 Friday off. So that is secure. Don't discuss the case at all
13 in any way. We'll bring you in probably in about ten minutes.

14 (Jury not present)

15 THE COURT: Do the parties want my master list of what
16 is in evidence?

17 MS. COHEN: Please, your Honor. We'll compare it.

18 THE COURT: Ten minutes.

19 (Recess)

20 MR. SHUR: Judge, since the jury is waiting, we're
21 walking through some stipulations, and it sounds like there are
22 going to be some objections.

23 It sounds like it's possible to resolve these issues
24 by extracting certain exhibits. This might take some more
25 time. I don't want to waste the Court's time and the jury's

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Pennetta - Cross

1 time.

2 THE COURT: Basically, both sides are not going to be
3 able to rest today?

4 MS. COHEN: Not at all.

5 MR. SHUR: I don't think it's a problem with the
6 government resting. I'm not speaking on behalf of them. There
7 is a problem with the proposed stipulations.

8 THE COURT: It's 10 till 5:00.

9 What are you proposing?

10 MS. COHEN: There are about ten different sets of
11 documents that the parties don't agree on. Perhaps your Honor
12 can review them and rule on them.

13 THE COURT: How long is the defense case? Is it just
14 a matter of moving documents into evidence?

15 MR. MOLO: Correct.

16 THE COURT: So, if we resolve all this, it's literally
17 just a matter of you standing up and saying -- you're not going
18 to try to put someone on the stand to walk the jury through it?

19 MR. SHUR: Your Honor, I think there's maybe one
20 testimonial stip.

21 MR. MOLO: By that, reading a page.

22 MR. SHUR: It's a paragraph.

23 MR. MOLO: We're not talking about doing what was done
24 earlier.

25 THE COURT: I understand. I'm not arguing with what

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1 you want to do. I'm watching the clock.

2 MR. MOLO: I know. I'm just explaining.

3 THE COURT: If there are things for me to rule on, I'm
4 happy to rule on them if that's all you're looking for at this
5 point.

6 If you think you can talk to each other and work out
7 some of this stuff, that's fine too.

8 MS. COHEN: We just talked to each other, and two
9 we're able to work out. The rest of them we don't agree on.

10 MR. SHUR: Judge, in terms of handling the Rule 29
11 motion, I wasn't sure what your Honor's preference was.

12 THE COURT: What my preference is to have the
13 government rest, to have you do your Rule 29 is preserved, have
14 you rest, and then we can argue it.

15 Is that acceptable to the defense?

16 MR. MOLO: Whatever you want to do, your Honor.
17 That's fine.

18 THE COURT: Otherwise, we're not going to finish
19 today. That's not the end of the world. It would be nice to
20 finish today.

21 MR. MOLO: Agreed. So, with that being said, would
22 you like us to spend some time with the government to see if
23 there are things that we can work out?

24 THE COURT: I'm hearing from Ms. Cohen that you do not
25 have a partner on the other side that thinks they can get this

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1 resolved without a ruling.

2 MR. MOLO: Okay.

3 THE COURT: So that's why they pay me the paltry
4 amount they pay me.

5 What are the issues?

6 While you're getting this set, did Defense 64 get
7 substituted in with one that actually does not have crazy meta
8 data on it?

9 MS. COHEN: They did not do that, your Honor.

10 MR. MASTER: Your Honor, just for the record, I
11 believe that that was a document from the Mesothelioma Applied
12 Research Foundation. That was the manner in which it was
13 produced to both parties by the custodian. No one has a better
14 copy.

15 THE COURT: Okay. What are the issues? Let's go.

16 MS. COHEN: Your Honor, the first defense exhibit I
17 understand they want to move in where there's an issue is
18 Defense Exhibit 179, which is -- it's a copy of a draft
19 addressed to The Witkoff Group from Jay Goldberg on January 3,
20 2012.

21 This was the subject of testimony both by Dara Iryami,
22 and they showed it to Mr. Witkoff, and the objections were
23 sustained.

24 THE COURT: What did Dara Iryami testify about this?

25 MS. COHEN: That Jay Goldberg handled the retainer

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Pennetta - Cross

1 agreement, and she didn't know whether it was sent or not.

2 MR. MOLO: No. There was an email that was
3 introduced --

4 THE COURT: It's one that has no attachment.

5 MR. MOLO: There was no attachment attached to the
6 email that was sent, but she's following up on engagement
7 letters prepared at that time.

8 We're offering this as a business record of Golberg &
9 Iryami. Whether or not Mr. Goldberg handled it or didn't,
10 we've had all types of business records admitted without people
11 testifying about their personal knowledge about their creation.

12 This is a two-person law firm. It's an engagement
13 letter -- if we have to call Dara Iryami to call her as a
14 business records witness, I suppose we can do that. That
15 doesn't seem to make a very sensible use of time.

16 MS. COHEN: Your Honor, my objection is not that it
17 was a document found in the files of Golberg & Iryami. It is
18 that it is simply not relevant if it was ever sent.

19 There's no testimony that it was sent, and Dara Iryami
20 doesn't know if Jay Goldberg -- which is why they couldn't move
21 it in through Dara Iryami.

22 MR. MOLO: We didn't try to move this document in
23 through Dara Iryami.

24 MS. COHEN: Correct.

25 THE COURT: Stay focused on why it's admissible.

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Pennetta - Cross

1 MR. MOLO: It's admissible because she shortly
2 thereafter sends this email following up about the engagement
3 letters. The government is free to argue that it was never
4 sent. But I think we also heard testimony from Mr. Witkoff
5 that they never signed engagement letters either.

6 So the fact that they sent this engagement letter,
7 which discloses --

8 THE COURT: What's the evidence that it was sent?

9 MR. MOLO: Well, there's an email shortly thereafter
10 following up --

11 THE COURT: Where is the email?

12 MS. COHEN: It's a defense exhibit. Is it 171? Off
13 the top of my head.

14 Your Honor, I believe it's Defense 119.

15 THE COURT: I don't have copies of them anyway.

16 MS. COHEN: We might have extra copies, your Honor.

17 THE COURT: Mr. Molo, I've got 119, which is the email
18 from --

19 MR. MOLO: Iryami to Parnes.

20 THE COURT: That says, "Happy new year. I hope all is
21 well with you and your family. I trust you received the
22 retainer agreement for Steve's signature. For various reasons,
23 we need to formalize our arrangement at this time."What that
24 doesn't say is that this was actually sent.

25 Here is my concern: I think it's entirely possible

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Pennetta - Cross

1 that although Iryami thought it was sent, that it was never
2 sent. I only base that on the fact that Witkoff didn't have a
3 copy of it.

4 MR. MOLO: Witkoff didn't have a copy of anything.

5 THE COURT: That's not true. They had all kinds of
6 records.

7 MR. MOLO: Witkoff the organization. I'm sorry.

8 THE COURT: So the fact that Witkoff -- as I recall,
9 somebody testified there was a search made. They don't have
10 this.

11 MR. MOLO: Correct. That was the testimony.
12 Mr. Witkoff also said they didn't sign engagement letters.

13 THE COURT: But that doesn't mean that they would have
14 received this and thrown it away.

15 MR. MOLO: I think it does.

16 THE COURT: You have to put evidence in to that
17 effect.

18 MR. MOLO: The government is free to argue whatever
19 they want.

20 THE COURT: You're trying to put this in as a letter
21 that was sent.

22 MR. MOLO: We could say it's a business record in the
23 records of Golberg & Iryami. We know they were sent to
24 Glenwood. We do know that, that the same letter was sent to
25 Glenwood.

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Pennetta - Cross

1 They're free to argue that it wasn't sent, and I'm
2 free to argue that it was sent.

3 THE COURT: You're not free to argue that because you
4 have absolutely no evidence of that.

5 MR. MOLO: I have the evidence of the email that
6 suggests that it was. She's following up.

7 THE COURT: Mr. Molo, the problem is you're missing a
8 link, which is you've got an unsigned copy of the letter that
9 appears in Goldberg's files.

10 MR. MOLO: Right.

11 THE COURT: You've got an email that says, I'm
12 following up. What you don't have is the evidence that this
13 was actually put into the mail.

14 MR. MOLO: The Hillman doctrine would suggest that the
15 email relates back to that letter and says that a person is
16 logically going to do what they say has been done or they're
17 going to do.

18 THE COURT: She wasn't the one who was responsible for
19 this.

20 MR. MOLO: She was obviously responsible enough to
21 send the follow-up email.

22 THE COURT: Where it dropped and died; right?

23 MR. MOLO: I'm not saying -- which is consistent, by
24 the way, with Witkoff's practice of not signing engagement
25 letters.

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1 THE COURT: This isn't about Witkoff's practice. This
2 is about Goldberg's practice.

3 MR. MOLO: Right. I agree that they don't follow up
4 further. That's consistent with what she testified to, that in
5 2009 they first started thinking about it.

6 THE COURT: This is 2012.

7 MR. MOLO: I know. You're saying that they followed
8 up, and it died, and they didn't do anything more. Back in
9 2009, when they first started thinking about this issue, their
10 testimony was they started, and they were overcome by events,
11 and they just didn't do it. It's a two-person law firm.

12 THE COURT: They did it with a lot of other clients.

13 MR. MOLO: I they did it with some clients. I agree.
14 There's no question it was created at Golberg & Iryami, and
15 it's a document in their files.

16 THE COURT: Correct.

17 MR. MOLO: That's all I want to introduce, and the
18 government can argue whatever they want.

19 THE COURT: What I'm saying, Mr. Molo, is you can't
20 introduce this document to argue that it was sent to Witkoff
21 because you have no evidence that it was sent.

22 MR. MOLO: But I can at least say that Golberg &
23 Iryami had done it. They prepared the letter.

24 THE COURT: That you can say.

25 MR. MOLO: That's fine. I'll do that.

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Pennetta - Cross

1 MS. COHEN: How will he do that, your Honor? He
2 already had Dara Iryami on the stand.

3 THE COURT: He can only do it if you're going to agree
4 that this was found in the files of Golberg & Iryami.

5 MS. COHEN: Being found in the files doesn't mean that
6 it's admissible, your Honor. I object to its admissibility for
7 all the reasons your Honor just stated.

8 Mr. Witkoff did testify he did a search of all of his
9 records, that Ms. Parnes was an immaculate record-keeper, and
10 he found two retainer agreements, one from 2009 not signed, and
11 one from 2013 not signed.

12 THE COURT: So the question is is it relevant that
13 Goldberg prepared the retainer agreement that had the required
14 disclosure but did not send it.

15 MS. COHEN: Not without testimony from Goldberg about
16 why he didn't send it, I don't think it's relevant at all. We
17 don't have that testimony.

18 THE COURT: Why is it relevant that they prepared it?

19 MR. MOLO: Because of the follow-up email. I
20 understand you're saying that the follow-up email doesn't prove
21 it was sent. I disagree with that. Nonetheless, the follow-up
22 email was sent where she's saying that, and there was a
23 document prepared in their files at the same time.

24 THE COURT: So what you're telling me, Mr. Molo, is
25 that, despite you getting me close to letting you put this in,

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Pennetta - Cross

1 in fact you want to use it to do exactly what I said it's not
2 admissible for you to do.

3 So I'm not going to let you do that.

4 MR. MOLO: Wait a minute.

5 THE COURT: If it's relevant, if it's relevant because
6 of the mere fact that Golberg & Iryami prepared a retainer
7 agreement with the required disclosure --

8 MR. MOLO: Correct.

9 THE COURT: -- that it was never sent because there's
10 no evidence that it was ever received.

11 So why is it relevant that they prepared it?

12 MR. MOLO: Why is it relevant that they prepared it?
13 Because the government is contending that they were trying to
14 keep all of this a secret.

15 They were keeping it a secret from everyone, and
16 Golberg & Iryami prepared this document that had it there. If
17 we have to put on a defense case where we have to recall
18 Ms. Iryami and put her on the stand to do that, the
19 government -- I don't know that they're going to get
20 Mr. Goldberg to testify. Maybe we'll make a defense motion to
21 immunize Mr. Goldberg to have him come here to put this record
22 in.

23 THE COURT: Why do you think she's going to be able to
24 put this in?

25 MR. MOLO: Because throughout this case we have argued

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Pennetta - Cross

1 about what it is that these people knew what they were doing at
2 what point in time.

3 The story that was told by Iryami was that they had
4 decided that they needed to make a change in their practices
5 with respect to disclosures on referral fees, not just for
6 Mr. Silver but for others.

7 They began to make that change, with other clients.
8 The rule required that it occur on a prospective basis, not
9 necessarily retrospectively.

10 That she at some later point in time decides oh, yeah.
11 They're changing something in the law. That reminds me. We
12 need to do this with Mr. Silver.

13 They send these letters out to -- there were retainer
14 agreements prepared. Granted she did say I don't mean to
15 suggest that she said otherwise, that Goldberg's job was doing
16 that.

17 THE COURT: So, as a fact witness, she will not be
18 able to testify that the letter was sent.

19 MR. MOLO: Right, but she can testify to the fact that
20 it was prepared. She could also probably testify --

21 THE COURT: She can testify that it was in their
22 files. So by definition it was prepared.

23 MR. MOLO: I don't know how it would be in their files
24 without being prepared by their firm as a business record.
25 Frankly, she could testify that, if it's in our files, that

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Pennetta - Cross

1 means it was sent. Maybe she says I don't know. Maybe she
2 says, if it was in our files, that does mean that it was sent.

3 What we do know is that there's a separate piece of
4 evidence which is in evidence which is the fact that there's
5 this email where she's following up shortly thereafter.

6 Maybe she sent a phony email that said, you know, I
7 want to follow up about these --

8 THE COURT: She thought it had been mailed or it
9 hadn't been.

10 MR. MOLO: I agree that's clearly possible.

11 MS. COHEN: She testified about that.

12 MR. MOLO: The government can prove their case by
13 circumstantial evidence. I certainly can come back and defend
14 my case in the same way.

15 It's circumstantial evidence that they had sent the
16 letter, if it was prepared and if in fact later there's an
17 email following up on that. That's all.

18 I get the fact that I can't say that it was definitely
19 put in the mail and all of that. I get it.

20 THE COURT: Again, the relevance is?

21 MR. MOLO: That they prepared it.

22 THE COURT: That they prepared it?

23 MR. MOLO: Right.

24 THE COURT: I don't think the government is arguing
25 that Golberg & Iryami was trying to cover this up, although

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Pennetta - Cross

1 they did enter into that crazy side letter.

2 MR. MOLO: I would say that that wasn't covering up.
3 There was a disclosure actually.

4 MS. COHEN: Your Honor, as I said, the government does
5 not dispute that this was a document found in the files of
6 Golberg & Iryami, but there's no evidence that it was sent.
7 Therefore, there's no relevance to the fact that it sat in the
8 files of Golberg & Iryami.

9 THE COURT: I disagree with that. I disagree that
10 there is no relevance that it was sent because it suggests that
11 the Goldberg firm, as Iryami testified, intended to clean out
12 their retainer agreements with both Witkoff and Glenwood.

13 MS. COHEN: Your Honor, I think Dara Iryami's
14 testimony was that Goldberg dealt with these things. She
15 thought he sent it, but she has no idea if he sent it.

16 He very possibly could not have sent it. It was not
17 found in the files of Witkoff. What the defense wants to argue
18 is they want to mislead the jury into believing it was sent.
19 There's no evidence of that.

20 THE COURT: The evidence is that Iryami thought it was
21 sent.

22 MS. COHEN: She testified to that, and we let the
23 email to Ms. Parnes go into evidence. So they can make their
24 arguments.

25 THE COURT: What does this add -- the email is in

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1 evidence?

2 MS. COHEN: Yes, it is, your Honor. We didn't object
3 to it.

4 MR. MOLO: The email is in evidence.

5 THE COURT: It's in evidence without the antecedent,
6 without what it refers to?

7 MS. COHEN: Because there wasn't anything attached to
8 it, your Honor.

9 MR. MOLO: I agree. There wasn't anything attached to
10 it. I'm not saying that I want to admit it for the fact that
11 this was attached.

12 I'm saying that there was an engagement letter
13 prepared, and that later she does send this email. That's the
14 sequence of events.

15 That's circumstantial evidence that if they prepared a
16 letter, that it was sent. The government can come back and say
17 there's no evidence that it was sent. That's fine.

18 THE COURT: Are you objecting to it being a business
19 record? Is your only objection that it's not relevant?

20 MS. COHEN: It's not relevant. If it goes in, I think
21 it's unduly prejudicial because I think they're going to use it
22 to mislead the jury.

23 THE COURT: That's your rebuttal argument.

24 I'm going to admit 179.

25 (Defendant's Exhibit 179 received in evidence)

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Pennetta - Cross

1 THE COURT: Mr. Molo, be careful about how you argue
2 it because what you don't want is an objection that is
3 sustained in your summations.

4 What's the next one?

5 MS. COHEN: Your Honor, the next document is Exhibit
6 175, which is something from the Journal News, a photo of Amy
7 Paulin who your Honor will recall was an assemblywoman. This
8 is a photo of her at an opera organization.

9 THE COURT: And the relevance is?

10 MR. MOLO: She testified that she went to these
11 lunches of this opera organization. We saw all the pictures of
12 Mr. Silver at the American Cancer Society. Here is Ms. Paulin
13 at the opera event.

14 THE COURT: So?

15 MR. MOLO: It's just corroborating her testimony. She
16 was at the opera luncheon. It's a nice picture.

17 MS. COHEN: Your Honor, it's not relevant. There's
18 nothing inconsistent. There's no real reason to put that in.

19 THE COURT: It doesn't seem relevant to me. I don't
20 see the relevance. That stipulation is out.

21 MS. COHEN: Your Honor, the next exhibit is proposed
22 Defense Exhibit 177, which is a biography of Michael Garcia at
23 Kirkland & Ellis.

24 THE COURT: That's definitely not coming in.

25 What possible relevance does Mr. Garcia's sterling

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Pennetta - Cross

1 biography have?

2 MR. MOLO: He represented the senate in the Moreland
3 Commission.

4 THE COURT: So what?

5 MR. MOLO: He was a United States attorney.

6 THE COURT: So what? Why is it relevant?

7 MR. MOLO: Because they've argued that there was some
8 coverup, and the Moreland Commission -- the action in
9 challenging the Moreland Commission's action was some evidence
10 or effort to cover up. In fact, it was anything but that. It
11 was a legal challenge that was prepared by some of the finest
12 lawyers in America that challenged --

13 THE COURT: You keep saying that. Trust me. There is
14 a long line of attorneys who would argue that that group of
15 attorneys is not the most, the best.

16 MR. MOLO: One of.

17 THE COURT: I suppose it depends on how far down the
18 list you're going. I'm not dissing Mr. Garcia.

19 MR. MOLO: I'll keep it between us.

20 THE COURT: All I'm saying is his resume is
21 irrelevant.

22 MS. COHEN: I thought the relevance was that he hired
23 me, your Honor.

24 Your Honor, the next exhibit is Defense Exhibit 178,
25 which is related to the other objections, the Loeb & Loeb

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Pennetta - Cross

1 biography.

2 MR. MOLO: This is another former prosecutor.

3 MS. COHEN: He didn't hire me, your Honor. So don't
4 worry.

5 THE COURT: No. I just don't see the relevance.

6 MS. COHEN: Your Honor, we only admitted very limited
7 evidence on the Moreland Commission.

8 Your Honor, the next set of exhibits the defense seeks
9 to admit is Defense Exhibits 180 through 184, which are copies
10 of various pleadings, briefings in the Moreland Commission.

11 THE COURT: I expected there was going to be a whole
12 lot of evidence about there were efforts made to obstruct the
13 investigation and all that. There was almost nothing.

14 MS. COHEN: Correct. So those aren't relevant,
15 your Honor.

16 THE COURT: Besides which, why would I admit civil
17 pleadings in the New York State proceeding? I just don't see
18 how it's relevant.

19 MR. MOLO: Judge, as to -- we heard testimony from a
20 couple witnesses that there was a motion to quash.

21 THE COURT: Motion to quash what subpoena? The
22 subpoena that had been served on Weitz & Luxenberg.

23 MS. COHEN: Correct, your Honor.

24 MR. MOLO: There was also a subpoena that was served
25 on the assembly members themselves, the senate members

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Pennetta - Cross

1 themselves. Let's put the senate aside from right now.

2 As to the assembly, there was testimony about a
3 briefing of the conference on the Moreland Commission response
4 by the assembly democrats.

5 And we heard in opening statement -- and I'm sure
6 we're going to hear again in summation -- that Mr. Silver, as
7 the leader of the assembly democrats, sought to cover up what
8 was going on, what they claimed to be his illegal conduct in
9 terms of his outside income through challenging the Moreland
10 Commission's authority.

11 The Moreland Commission's authority was challenged on
12 solid, legal grounds.

13 THE COURT: That's a legal argument. The jury doesn't
14 know if this is solid legal grounds or total poppycock. It was
15 never ruled on.

16 MR. MOLO: Right.

17 THE COURT: So what are they supposed to do with this?
18 It was never ruled on.

19 MR. MOLO: What they're supposed to do is see that
20 without the bios there, there's enough testimony in the record
21 that these are bona fide people that filed this complaint or
22 filed this motion to quash, and that they were acting in good
23 faith, whether or not this would have won or not, this was a
24 very public thing.

25 This wasn't Mr. Silver whispering in someone's ear,

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Pennetta - Cross

1 why don't you kill this thing.

2 THE COURT: You established all of that. The actual
3 papers filed is simply not relevant. There is no way a jury
4 can figure out what this means, and the fact that respectable
5 lawyers filed a motion doesn't mean it's meritorious.

6 Very respectable lawyers file things in front of me
7 all the time. One side always loses. That's the nature of
8 litigation.

9 MR. MOLO: I don't disagree with that. I don't think
10 that's relevant to whether or not this would have won or lost.
11 The question is was it a good-faith, bona fide effort as
12 opposed to this allegation -- they should then be barred
13 from --

14 THE COURT: The jury can't figure that out. This is
15 going to require a Supreme Court justice to figure it out. As
16 I understand it, it got withdrawn.

17 MR. MOLO: Then the government should be barred from
18 arguing that anything that was done with respect to the
19 Moreland Commission was done in some kind of a nefarious way to
20 cover anything up. This was the evidence with respect to the
21 Moreland Commission. These lawyers acted in good faith, filed
22 a complaint --

23 THE COURT: They acted on behalf of their client.

24 MR. MOLO: Correct.

25 THE COURT: That doesn't mean it's meritorious.

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Pennetta - Cross

1 MR. MOLO: I'm not saying it's going to win. The
2 distinction is it doesn't have to win to refute the point that
3 the government is trying to make, which is that Mr. Silver was
4 somehow trying to quash this Moreland Commission subpoena in a
5 way that was nefarious, and it wasn't.

6 THE COURT: We'll deal with the issue of what you can
7 argue and what you can't argue about the Moreland Commission
8 another day, another time. It's now 5:15. The submissions,
9 the judicial submissions, are not admissible.

10 MR. MOLO: Okay.

11 MS. COHEN: Your Honor, the next document the defense
12 seeks to admit are documents related to Columbia's OSHA
13 violations. Some of this is contained in the contracts.

14 It's Defense Exhibits 162-1, 162-2, 231 through 235.

15 THE COURT: Why are Columbia's OSHA violations
16 relevant?

17 MR. SHUR: Judge, it's relevant because the government
18 has argued, with respect to the grant review process, that the
19 Department of Health and the comptroller's office and the AG's
20 office simply rubber stamps any grant recommendations from the
21 assembly.

22 As we pointed out through a number of witnesses, maybe
23 it's not the review process that happens elsewhere, but there
24 is a legitimate review process, and the OSHA -- these emails,
25 these communications, which are business records of the

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Pennetta - Cross

1 Department of Health and/or the comptroller's office, are
2 relevant because they show not only that they follow the
3 process, but it's a meaningful process in that they identified
4 an OSHA violation at Columbia that held up the approval of the
5 grant for several months as they worked through whether or not
6 this was a live OSHA violation or whether it was resolved.

7 So it shows -- it's not just people shuffling papers,
8 but there's actually a legitimate review. This issue was
9 identified and dealt with, as it should have been, pursuant to
10 this protocol.

11 MS. COHEN: Your Honor, some of those OSHA documents
12 are already in the contracts as part of the Vendex review that
13 was done, and they're in evidence.

14 MR. SHUR: If the objection is it's cumulative, it's
15 not. There is a reference in the contract that is somewhat
16 ambiguous. The emails actually show that it was identified on
17 X date and that there was a review of it.

18 This is part of the files of the Department of Health
19 and the comptroller's office.

20 THE COURT: That just makes them business records.
21 The issue is relevance.

22 MR. SHUR: I understand.

23 THE COURT: I'm sorry. Ms. Cohen, tell me again what
24 your objection is.

25 MS. COHEN: Sure. As to that part of the exhibit that

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Pennetta - Cross

1 has the OSHA documents -- those documents are already contained
2 in the contracts that we entered into evidence because it was
3 responsive to the Vendex question.

4 With regard to the extra emails that are there,
5 they're not relevant back and forth about the OSHA violation
6 and Columbia.

7 THE COURT: They tend to show that there are other
8 steps that have to be taken and that the comptroller
9 actually -- is it the comptroller's that ticks --

10 MR. SHUR: It was identified by the comptroller's
11 office, and then there was communications between the
12 Department of Health and the comptroller in an effort to
13 resolve this.

14 MS. COHEN: Your Honor, I think it's the Department of
15 Health that deals with actually getting all the required
16 paperwork for the contract. So it might be something that the
17 comptroller's office saw, and then they went back to the
18 Department of Health.

19 THE COURT: Probably so, but they required it to be
20 resolved before they would pass the grant the to next step?
21 I'm going to let this in. This stipulation --

22 MS. COHEN: Your Honor, we don't want to actually do
23 the stipulations. We don't need to do the stipulations. They
24 can enter the document. We won't object on business grounds.
25 There's no reason to do the stipulation.

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Pennetta - Cross

1 MR. SHUR: That's fine, Judge.

2 THE COURT: The stipulation is out. The documents are
3 in. This little package of documents are in.

4 MS. COHEN: Your Honor, the next documents the defense
5 seeks to admit are Defense Exhibits 160, which is the bills,
6 the HCRA bill itself.

7 But then there are a bunch of letters attached to it
8 which are like the legislative history. We have no problem
9 with the bill itself but not the legislative history.

10 THE COURT: Why is the bill relevant?

11 MR. SHUR: Judge, I think this is fairly
12 straightforward. Just to be clear, what we're talking about,
13 it's the bill jacket and the legislative history that was
14 pulled from the New York State archives.

15 It's relevant because the government, in their opening
16 and through various witnesses, have suggested that HCRA and the
17 money that was allocated through the statute was a secret pot
18 of money. That's how it was referred to.

19 The secret pot of money is actually discussed in this
20 very public law that you can find on the Internet and
21 elsewhere. That's the relevance, Judge.

22 THE COURT: But the issue -- I don't think anybody has
23 suggested that the money was secret. It's that there was not
24 transparency in terms of how it was spent.

25 MR. SHUR: Judge, in the government's opening, they

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Pennetta - Cross

1 said it's a secret pot of money, and then they asked
2 Assemblywoman Paulin whether she knew anything about it, and
3 she said she didn't.

4 So between those two pieces, the government clearly
5 argued that this was hidden, the existence of the pot of money
6 was hidden from the public.

7 Within the bill, it discusses that there's going to be
8 this pot of money and that some of it will be apportioned to
9 the Speaker of the Assembly as the leader of the assembly, and
10 some of it will be given to the majority, the leader of the
11 senate, and some of it will be given to the Department of
12 Health, the commissioner, and that they'll have discretion as
13 to how to use it.

14 THE COURT: I'm looking through this, and I'm looking
15 at press releases. I'm looking at the governor's memo, the
16 Department of Health weighing in in favor of it.

17 I don't think the bill is actually in here.

18 MR. SHUR: I'm sorry, Judge?

19 THE COURT: I don't think the bill is in here.

20 (Pause)

21 THE COURT: In the thing that you handed me, the bill
22 does not appear.

23 MR. SHUR: Judge, it's the bill jacket, and then
24 there's the voting history and various correspondence relating
25 to the bill. This was all pulled from the New York State

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Pennetta - Cross

1 archives.

2 THE COURT: I understand all that. My point is you
3 want to put the bill in, and this does not include the bill.

4 MR. SHUR: We're happy to amend this to include the
5 bill. I apologize. I thought it included the bill itself as
6 well.

7 THE COURT: I think all of the rest of this stuff,
8 which are the letters from Blue Cross supporting it, the letter
9 from the American College of Emergency Physicians supporting
10 it -- none of this is relevant. Under your articulated theory,
11 the bill is relevant.

12 MR. SHUR: The fact that you have all of these third
13 parties outside of Albany supporting it shows that they're
14 aware of it. It's not a secret.

15 THE COURT: I'll give you the bill if you can bring me
16 the bill, if you can find the bill.

17 MR. SHUR: We have the bill. I understand the
18 third-party letters, Judge. What about the press release that
19 the governor did about the bill?

20 THE COURT: No. The bill. Your theory is the bill.

21 MR. SHUR: The theory is it wasn't a secret. If
22 there's a press release when the bill comes out, I think that
23 certainly rebuts the government's argument that this was all
24 somehow secret money under the table that no one knew about.

25 MS. COHEN: Your Honor, I'm sure the press release

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Pennetta - Cross

1 does not list the secret pool of money.

2 THE COURT: That's not usually language that makes it
3 into press releases.

4 MR. SHUR: Just for the record, I'm looking at the
5 transcript from the government's opening. It says, "You will
6 learn during this trial that the money came from a secret pot
7 of money."

8 Then there's a second reference which says, "The
9 secret pot of money that the defendant used to fund Dr. Taub's
10 research."

11 I think that, coupled with Amy Paulin's testimony
12 suggesting that if she wasn't aware of it, the world wasn't
13 aware of it, this is a fair response.

14 MS. COHEN: When I passed the document up, your Honor,
15 I said if it's a bill, we don't object to the bill itself.

16 MR. SHUR: I'm now talking about the press release.

17 THE COURT: As I was concerned, is the government
18 ready to rest? What do you have to do?

19 MS. COHEN: Your Honor, we have three exhibits to move
20 in. Two are the same as two defense exhibits that were moved
21 in. One I talked with defense counsel, and they have no
22 objection to.

23 We also would like that the transcripts of the
24 recordings, since there's no dispute as to that they are
25 accurate transcripts, be allowed to go back to the jury room as

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Pennetta - Cross

1 part of their deliberations.

2 That is common in many cases. There's not a debate
3 that they accurately transcribed what is on the tapes. We
4 would also ask that the two demonstrative charts regarding the
5 real estate legislation, which is Government Exhibit 1521, as
6 well as the defense chart, Government Exhibit 133, be allowed
7 to go back to the jury room.

8 THE COURT: We'll start with that. We'll start with
9 the demonstrative chart on your bill, including your blow-up
10 with the red markers on it.

11 What's your position on that?

12 MR. MOLO: What do you mean my marking on it?

13 THE COURT: Your marking and then the original
14 government exhibit that had that.

15 MS. COHEN: I'm sorry, your Honor, if I was confusing.
16 Defense Exhibit 133 is a different chart. It is not our chart
17 with the markings.

18 THE COURT: What's Defense 133?

19 MS. COHEN: It dealt with the property tax,
20 your Honor.

21 THE COURT: The property tax what?

22 MR. MOLO: Cap. There was legislation that at the
23 same time related to property tax cap.

24 THE COURT: That was not moved in?

25 MR. MOLO: We didn't offer it.

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Pennetta - Cross

1 MS. COHEN: They moved it in as an aid to the jury.
2 So it was shown to the jury, and your Honor said it would be
3 treated the same way as Government Exhibit 1521, as a
4 demonstrative, but wouldn't necessarily go back to the jury
5 room. There's no debate about the content of either of those.

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1 MR. MOLO: Is wasn't moved in, it was moved in as --

2 THE COURT: 133. Do you want to move it in? Because
3 I'm going to let their chart in.

4 MR. MOLO: I would say both should say out.

5 THE COURT: But that's not going to happen so.

6 MR. MOLO: Both of them in.

7 THE COURT: So defense 133. Do you want a different
8 number or it will go in as Defense 133?

9 MR. MOLO: 133.

10 THE COURT: Okay. I need my package of defense
11 exhibits.

12 MS. COHEN: Sorry, your Honor.

13 THE COURT: The defense has them. Are you done with
14 it?

15 MR. MOLO: Yes, your Honor.

16 THE COURT: What is the chart?

17 MS. COHEN: Government Exhibit 1521.

18 THE COURT: So 1521 will be allowed to go to the jury.
19 I will admit 133.

20 MR. GOLDSTEIN: Defendant's Exhibit 133.

21 THE COURT: 1521.

22 MS. COHEN: Government Exhibit 1521.

23 THE COURT: So that's admitted.

24 MS. COHEN: We will move it in with the jury.

25 THE COURT: What else?

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1 MS. COHEN: The transcripts of the calls.

2 THE COURT: Transcript of the call. What is the
3 defense?

4 MS. COHEN: Transcripts of the calls, transcripts of
5 the recorded statements.

6 THE COURT: Yes.

7 MS. COHEN: They would be 1-TA.

8 MR. MOLO: We have no objection to the recording going
9 in which has been admitted in evidence. The transcripts are
10 not the evidence and they should not go back to the jury room.

11 THE COURT: I'm not going to let them go back to the
12 jury room.

13 MS. COHEN: Your Honor, the government, since we
14 amended Government Exhibit 1 to include the extra excerpt that
15 the defense wanted in and we moved 1A into evidence and 1TA, we
16 ask we remove Government Exhibit 1 and Government Exhibit 1T.
17 They were previously admitted, now they're contained in
18 Government Exhibit 1T-A. We don't want the implication based
19 on how the defense did it so we would like to move Government
20 Exhibit 1 and Government Exhibit 1T as not in evidence.

21 THE COURT: I don't know about removing it. 1 is in.
22 No.

23 Anything further?

24 MS. COHEN: That is it from the government.

25 THE COURT: Okay. I'm going to bring the jury out.

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1 You are going to move these exhibits in. The defense, I guess
2 you can move 133 in on Monday when you complete your case.

3 MR. MOLO: Okay.

4 THE COURT: Here is my plan. I'm going to bring them
5 out. Let you rest -- move your exhibits in, rest. I'm going
6 to send them home. We will then deal with allocuting your
7 client, your case will go in Monday morning, and you will move
8 directly into summations. Okay?

9 Any objection?

10 MR. MOLO: I'm sorry. I was distracted. So we move
11 whatever our exhibits are, we will deal with these issues.

12 THE COURT: We will deal with the rest of this this
13 evening so you will be ready to go Monday morning.

14 MR. MOLO: Okay.

15 THE COURT: You are going to move a bunch of stuff
16 into evidence.

17 MR. MOLO: Right.

18 THE COURT: And roll directly into summations.

19 MR. MOLO: Fine. And instruction conference Friday
20 sometime?

21 THE COURT: Instruction conference on Thursday. I
22 want to get the jury out here.

23 MS. COHEN: Can we confirm that the defense is not
24 calling any witnesses?

25 THE COURT: Yes, they are not calling any witnesses.

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1 MS. COHEN: Thank you, your Honor.

2 THE COURT: Correct?

3 (Continued on next page)

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1 (Jury present)

2 THE COURT: Okay, sorry for the delays, folks.

3 Ms. Cohen?

4 MS. COHEN: Your Honor, the government would like to
5 move into evidence what's been marked for identification
6 Government Exhibit 1521, Government Exhibit 732, Government
7 Exhibit 702, and Government Exhibit 703-1.

8 THE COURT: Any objection?

9 MR. SHUR: No objection, Judge.

10 THE COURT: Okay. 1521, 732, 702 and 703-1 are
11 received.

12 (Government's Exhibits 702, 703-1, 732 and 1521
13 received in evidence)

14 MS. COHEN: Your Honor, the government rests.

15 THE COURT: Thank you.

16 All right, ladies and gentlemen, what the government
17 has just told me is that they have now completed their case.
18 You have heard all the evidence you are going to hear from the
19 government.

20 I have told you you are going to be off tomorrow and
21 Friday -- Thursday and Friday, so we are going to start back on
22 Monday. The defense has the right, if they wish, to put a case
23 in. I anticipate they're going to at least put some documents
24 in front of you. The next step after that will be summations,
25 a jury charge and then you will start deliberations. Okay? So

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1 we are getting towards the end.

2 So, I'm going to let you leave at this point. You are
3 going to be gone for four days; don't think about the case,
4 don't talk about the case, don't let anybody talk to you about
5 the case, don't read about the case, don't listen to anything
6 about the case or any other corruption trial that happens to be
7 going on at this moment. Okay? So, put this entirely out of
8 your mind, come back Monday morning refreshed and ready for a
9 long day.

10 So, we need you here at 9:15 Monday morning. Okay?
11 Thank you, all, and have a very nice weekend.

12 THE JURY: Thank you.

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1 (Jury not present)

2 THE COURT: Okay, when I left off I was looking
3 through the Governor's press release for anything relative to
4 the pool of money that was going to be at the discretion of the
5 Speaker of the House and I'm not seeing it so, Mr. Shur, can
6 you direct me where in the press release there is any
7 indication that there is going to be a pool of grant money
8 under the discretion of the Speaker of the Assembly?

9 MR. SHUR: One moment, Judge?

10 THE COURT: Sure.

11 (Pause)

12 THE COURT: 703-1 was already in evidence.

13 MS. COHEN: It is in as a defense exhibit, we want to
14 move it in as a government exhibit.

15 THE COURT: Okay.

16 MR. SHUR: Judge, as we are reviewing it, there is
17 reference on the second page --

18 THE COURT: Of the press release?

19 MR. SHUR: Yes.

20 THE COURT: To.

21 MR. SHUR: To \$70 million that is being set aside for
22 public health programs.

23 THE COURT: Right, but it doesn't say it is under the
24 exclusive discretionary control of the Speaker of the Assembly,
25 or presumably that was divvied up a third to the Assembly, a

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1 third to the Senate and a third to the Governor. But it
2 doesn't say that.

3 MS. COHEN: That's not even the same fund.

4 THE COURT: That's not the pool.

5 MS. COHEN: No, it isn't, your Honor. It was 8.5,
6 8.5, 8.5.

7 THE COURT: Which adds up to what?

8 MR. SHUR: Not at the time it was passed, is my
9 understanding.

10 THE COURT: This doesn't really give the sort of
11 transparency that --

12 MR. SHUR: Well --

13 THE COURT: I understand your point. Look, Mr. Shur,
14 if it was in here --

15 MR. SHUR: If the secret pot of money is in a press
16 release it is not so secret, right?

17 THE COURT: But it is not in there. There is nothing
18 in here that says that there is a fund of money that is at the
19 discretion which is what you said, I thought, in your argument
20 why this should be admissible, is that it was clear from --
21 what you said was it is in the bill that there was a third that
22 was given to the Assembly, a third to the Senate, and a third
23 to the Governor so that is not in the press release.

24 MS. COHEN: And that's why we didn't object to the
25 bill.

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1 MR. SHUR: Judge, on the press release, if it is okay
2 with you, I'm going to let Ms. Le address it since she is
3 familiar with the release itself.

4 THE COURT: I am fine to hear from Ms. Le.

5 MS. LE: My understanding is that when the bill was
6 originally passed is that the Department of Health -- so the
7 Commissioner of the Department of Health received its own
8 priority pool and it was \$15 million.

9 THE COURT: 1-5?

10 MS. LE: That's what that says in this press release.
11 After that happened, the Senate Majority Leader and the Speaker
12 of the Assembly, or I should say the Senate and the Assembly
13 also wanted their own priority pools and so that was in a later
14 version of the bill I think is what happened.

15 So, this press release only refers to the priority
16 pool that the Department of Health received.

17 THE COURT: Okay. So thank you. That doesn't -- I
18 don't want to ruin your career, Ms. Le, but that doesn't
19 advance your ball, Mr. Shur.

20 MR. SHUR: Understood.

21 Well, Judge, I think we can agree that the Governor's
22 press release comes out.

23 THE COURT: None of the -- I will let you put the bill
24 in.

25 MR. SHUR: That's fine, Judge.

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1 THE COURT: Looking through this, I didn't see
2 anything about money going to the discretion of the Speaker of
3 the Assembly.

4 MR. SHUR: No. The broader point was simply that the
5 notion that HCRA and the fact that it was going to -- the
6 statute was going to provide for funding for the healthcare
7 program was not a secret.

8 THE COURT: That wasn't -- but that wasn't what the
9 government said. The issue is whether there was a pool -- not
10 that the -- there are no secret bills. I mean, everything has
11 to pass. Everything is out in the open. The issue was how
12 were pools of money set up.

13 MR. SHUR: I understand.

14 THE COURT: And how much transparency was there.

15 MR. SHUR: Right. So the bill, as I mentioned,
16 addresses the fact that the head of the Assembly and the head
17 of the Senate and the Department of Health Commissioner each
18 gets a separate pool or pot of money.

19 THE COURT: I can't wait to see the bill establishing
20 that because bills tend not to be written with that level of
21 clarity, particularly on something that was done like that.
22 But, perhaps it is that clear and so I don't have it here so I
23 am going to require you though, to bring it to the charge
24 conference and we can talk about it at the charge conference
25 because I do not want to deal with this Monday morning.

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1 MR. SHUR: Understood, Judge.

2 THE COURT: Okay. What's next?

3 MS. COHEN: The next documents the defense seeks to
4 admit are marked Defense Exhibits 245 and 246. They are
5 e-mails, one of them Dr. Taub is on, the other one I don't
6 believe he is on, it is just administrators at Columbia dealing
7 with internally how they use the grant money that they get.

8 Whatever testimony there is on this point and whatever
9 documents should have been introduced through Dr. Taub, that is
10 confusing and is also misleading about how the grant money was
11 spent and how it moved around Columbia to the Mesothelioma
12 Center.

13 THE COURT: Mr. Molo, what is the relevance?

14 MR. MOLO: If you go down to 245 on the bottom --

15 THE COURT: On the back page.

16 MR. MOLO: I am referring to this part right here from
17 Dr. Taub.

18 THE COURT: Yes.

19 MR. MOLO: He testified he sent this grant application
20 to administrators at Columbia. We went through this whole
21 process -- excuse me, New York Presbyterian and then Columbia.
22 You told me don't go through everything with him, if you recall
23 at a side bar, on Columbia. There were two grants, the first
24 one was New York Presbyterian as the contracting party; the
25 second one, Columbia as the contracting party. And I did keep

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1 my examination short. These are business -- well, relatively
2 speaking -- shorter than it would have been otherwise. Let's
3 put it that way.

4 These are business records of Columbia, we have no
5 problem stipulating to all the business records.

6 THE COURT: Mr. Molo, please don't make that argument
7 to me anymore. This is not tit for tat. It has to be
8 relevant.

9 MR. MOLO: The relevance of this has to do with
10 significant argument we have made throughout the trial that
11 administrators at both New York Presbyterian and Columbia
12 played a role and had visibility into these contracts. This
13 wasn't Dr. Taub doing them by himself in secret and that's all
14 this establishes as part of that process.

15 THE COURT: I don't think there is any suggestion that
16 the two schools were not aware or that Columbia and
17 Presbyterian weren't aware that they had \$250,000 coming into
18 them. The issue was they weren't aware of what was behind the
19 grant.

20 MR. MOLO: Okay, which is certainly an argument that
21 the government can make but as to the level of activity and
22 what went into these grants this wasn't, as I said to Dr. Taub
23 you filled out a coupon, sent it in and got the check back.
24 This refutes that. And so --

25 THE COURT: You can make your argument.

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1 MR. MOLO: All right, but that's what this goes to.
2 These are business records of Columbia.

3 THE COURT: Again, that's not the issue.

4 MR. MOLO: Okay. But as to the relevance, I think I
5 have stated it.

6 MS. COHEN: Your Honor, my concern is that the defense
7 is picking and choosing these particular documents because they
8 want to argue that somehow Dr. Taub himself personally
9 benefited from the state money. There were documents that the
10 defense introduced on cross-examination of Dr. Taub that we did
11 not object to that talked about how the state money came into
12 Columbia and I think they are cherry picking two documents
13 without Dr. Taub on the stand so that they can make arguments
14 in closing.

15 MR. MOLO: I raise my hand. I will not argue that
16 Dr. Taub personally benefited from the money. In fact, I asked
17 him that on cross-examination and he said he didn't. So, that
18 issue --

19 THE COURT: I don't see it -- he is not going to argue
20 that but I'm not even sure how this document advances that
21 ball. I mean, this is all about the employees that are going
22 to work on it are in the Division of Oncology, they're trying
23 to figure out how the flow of money is going to work within the
24 hospital.

25 MS. COHEN: Your Honor, with that representation that

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1 it's not going to be used to argue that, and if it is, we are
2 going to object at closing.

3 THE COURT: And if you object it will be sustained.

4 So this document, which is 245 and 246 -- 245,
5 Mr. Molo, your argument, I understand it. 246, I don't
6 understand how that is relevant under your explanation of why
7 it is relevant.

8 MR. MOLO: It relates to the -- see, it says Taub
9 grant and these are the same people that are involved and --

10 THE COURT: Right, but this is on the disbursement of
11 funds. You said you wanted to use it to show that there was
12 actual diligence of some amount done at the recipient end. 245
13 advances that cause. 246 doesn't.

14 MR. MOLO: 246 is a person from the comptroller, I
15 believe, or accounting office, this Mr. Elhadidi or
16 Ms. Elhadidi -- forgive me -- but to Karen Colon and Ahema
17 Asare, says Taub grant, and it goes to the processing of these
18 grants as they went along. This is just showing that this is a
19 level of contact, Judge.

20 THE COURT: I will give you 245. 246 I think is
21 confusing and its confusion outweighs its relevance but I will
22 give you 245.

23 MR. MOLO: All right.

24 THE COURT: Which is kind of the processing aspect
25 that it has to go here and there.

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1 MR. MOLO: Can we take one out of order, perhaps, if
2 that's okay?

3 THE COURT: I have got no order. I am dealing with
4 things as you hand them to me.

5 MR. MOLO: It is Defendant's Exhibit S-16, stipulation
6 16 with Exhibit 186.

7 MR. MASTER: What does it relate to?

8 MR. MOLO: Stipulation concerning Tax Commission of
9 New York Summary Checklist.

10 MS. COHEN: I have my copy, your Honor.

11 THE COURT: Thank you.

12 MS. COHEN: We found a copy from the extra set.

13 MR. MOLO: I think the Judge has it.

14 THE COURT: I have it. What is its relevance?

15 MR. MOLO: Mr. Runes testified, Judge, his testimony
16 at page 1806 of the transcript was about whether or not these
17 retainer agreements needed to get filed.

18 THE COURT: Right.

19 MR. MOLO: And he said I'm not sure, your Honor, but I
20 believe that the retainer agreements for certiorari agreements
21 are filed someplace and are available to be viewed where as the
22 side letter would not be. That's what his testimony was. In
23 fact, they don't need to be filed --

24 THE COURT: Totally and completely irrelevant. His
25 state of mind was we've got a big old problem because these

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1 things have to be filed and therefore we have to work out some
2 other way to make Mr. Goldberg happy without risking a public
3 disclosure. What actually is required is irrelevant.

4 MR. MOLO: Okay. Well, he says I believe. It is not
5 to a certainty.

6 THE COURT: It is irrelevant. It is irrelevant. He
7 was wrong. Too bad.

8 MR. MOLO: Okay.

9 THE COURT: They could have just left the retainer
10 agreements the way they were.

11 MR. MOLO: And so, I would --

12 THE COURT: But, instead, they jumped through hoops
13 that looked suspicious and his explanation is the reason he did
14 it was because he thought the retainer agreement had to be
15 filed.

16 MR. MOLO: Okay.

17 THE COURT: That's incriminating. The fact that he
18 was wrong is irrelevant.

19 MR. MOLO: To make my record -- I understand.

20 THE COURT: Go ahead.

21 MR. MOLO: To make my record, I would like to offer
22 this document as a business record which you are not going to
23 admit on relevance grounds but at least it is in the record.
24 That's all I want to do.

25 THE COURT: It doesn't work that way. It is either in

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1 or it is not in. I agree with you that it is a business
2 record.

3 MR. MOLO: Okay.

4 THE COURT: Assuming that this is correctly a copy of
5 the real estate -- the Tax Commission's Checklist.

6 MS. COHEN: Your Honor, I don't know. I would also
7 note that it is 2015 which would not have been the checklist in
8 place at time.

9 MR. MOLO: Theoretically -- theoretically -- an
10 appellate court looking at the record, right, would say that
11 the Judge made the ruling on relevance but they didn't have
12 before it what it was that we were offering and that's why I
13 want to at least offer this document as if I had a custodian
14 here. That's all I'm asking, so it is just part of the record.

15 THE COURT: I don't know what that is. I mean, how
16 the exhibits get up to the Second Circuit is something you will
17 have to deal with if that becomes an issue.

18 MR. MOLO: I have to have offered it for it to get up.

19 THE COURT: You have offered it.

20 MR. MOLO: So it is part of the record.

21 THE COURT: Is there objection?

22 MR. MOLO: Yes, 186.

23 THE COURT: There is an objection?

24 MS. COHEN: There is an objection.

25 THE COURT: Okay. Sustained.

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1 MR. MOLO: Okay.

2 THE COURT: On relevance.

3 MR. MOLO: On relevance grounds.

4 THE COURT: And this is a 2015 checklist and I don't
5 know if that's the same checklist.

6 MR. MOLO: That's a relevance issue.

7 THE COURT: Also relevance.

8 MR. MOLO: As long as it is relevance.

9 Thank you.

10 MS. COHEN: Your Honor, the next document or the next
11 document in my pile that I got from the defense is Defendant's
12 Exhibit 163 for identification.

13 THE COURT: I thought this was part of -- I feel like
14 I have seen this before. There was an e-mail string that you
15 used when you had Mr. Mandel on the stand.

16 MS. COHEN: Correct, your Honor.

17 THE COURT: Was this not part of that e-mail string.

18 MS. COHEN: This was not part of it and the defense
19 did not seek to introduce it on cross.

20 THE COURT: What is the relevance?

21 MR. MOLO: This is a Shalom Task Force --

22 THE COURT: What is the relevance?

23 MR. MOLO: It is OHEL.

24 THE COURT: What is the relevance?

25 MR. MOLO: What is the relevance? It is part of the

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1 process of hiring Jonathan Taub. We had all the testimony
2 about it is another business record.

3 THE COURT: Why isn't it cumulative?

4 MR. MOLO: It is not cumulative because it is showing
5 the timing when it was they did it. Mr. Silver didn't --

6 THE COURT: There is another e-mail string that is in
7 this same time frame, right?

8 MS. COHEN: Correct, your Honor.

9 THE COURT: Do you have that document? It was in
10 evidence.

11 MS. COHEN: I would also say David Mandel who is on
12 this e-mail was on the stand and if the defense wanted to
13 introduce this, they should have done it through David
14 Mandel -- unless they didn't like the answer they were going to
15 get from him, your Honor.

16 MR. MOLO: The resume was sent in February.

17 THE COURT: No, no. No, no, Mr. Molo.

18 When Mr. Mandel was on the stand --

19 MR. MOLO: Right.

20 THE COURT: -- there was testimony about he forwarded
21 the resume and then there was kind of a lapse of time and then
22 either he got a call or something happened and he pinged, I
23 guess, Sharvit again saying what's happening with Taub.

24 MR. MOLO: Right.

25 THE COURT: I want to get him interviewed or

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1 something -- this is important to Shelly or something. There
2 was something like that.

3 MR. GOLDSTEIN: 384-02 has, it is actually a week
4 earlier --

5 THE COURT: 384-02. Is that on the screen?

6 MR. GOLDSTEIN: Correct, the June 20th --

7 MS. COHEN: And there is another one, 384-03, and
8 there is a prior one 384-01.

9 MR. MOLO: It is just the timing, Judge.

10 THE COURT: Isn't that in here? So this is just --
11 this is a week later. This is a week after Mandel is saying to
12 Sharvit, please, check on the status of a follow-up with Taub,
13 the resume forwarded by the Speaker, and then there is back,
14 back, back, he pings him again on June 2nd, that is Mandel
15 pings Sharvit again on June 22nd. The morning of June 22nd he
16 says we are playing phone tag. I will let you know as soon as
17 I speak to him.

18 So, that sets your timing if the timing is when did
19 the resume --

20 MR. MOLO: That will work.

21 THE COURT: So the resume goes over in February and
22 they don't get to him meaningfully until June.

23 MR. MOLO: Correct.

24 THE COURT: So that's already in evidence. That
25 document is in evidence.

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1 MR. GOLDSTEIN: This document is in evidence, your
2 Honor.

3 THE COURT: Okay.

4 MR. MOLO: It just is another document that further
5 completes this -- I mean, Judge.

6 THE COURT: Why didn't you put it in when Mr. Mandel
7 was on the stand?

8 MR. MOLO: Because I'm putting it in now. You told me
9 don't call --

10 THE COURT: No, no, no.

11 MR. MOLO: -- avoid record custodians and we are doing
12 that.

13 THE COURT: But you had Mr. Mandel on the stand. This
14 is him -- not even him -- wait a minute. Is he in here at all?

15 MS. COHEN: He is in there on the top, your Honor.
16 From David Sharvit to David Mandel.

17 THE COURT: So it is Sharvit sends it to Mandel a week
18 after that e-mail saying basically we have got him coming in.

19 MR. MOLO: Which just further completes the record.
20 All I'm doing -- we are not talking about, by the way a
21 mountain of evidence here. We didn't have any problem with the
22 government stipulating to all the business records they wanted
23 to put in. This is one business record on this issue. It is
24 not going to create some grave injustice to allow one record in
25 like this to complete this story.

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1 THE COURT: But, again, the fact that you agreed to
2 business records doesn't advance your ball. Please stop making
3 that argument.

4 MR. MOLO: Okay.

5 THE COURT: It really does not advance the cause.

6 MR. MOLO: But why, in the interest of --

7 THE COURT: Stop.

8 What is the government's objection to this?

9 MS. COHEN: Your Honor, the government has no
10 objection to this.

11 THE COURT: 163 is in.

12 What else?

13 MS. COHEN: Your Honor, the next document that the
14 defense handed the government was Defense Exhibits 161 and 230
15 which the government does have objections to.

16 THE COURT: Start with 161. Why is 161 admissible?

17 MR. SHUR: Judge, the question is why is it relevant?

18 THE COURT: Let's start with why is it admissible?
19 Because you have got lots of hearsay statements in here, right,
20 including Mr. Silver's hearsay statement.

21 MR. SHUR: It is a business record of the Attorney
22 General's office.

23 THE COURT: No, no, no, no. Look. Y'all play very
24 fast and loose with what is a business record and what isn't.
25 A business record is something that is prepared by someone with

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1 knowledge of the item so here what you are trying to do is if
2 you have got embedded other hearsay in a business record, you
3 have to deal with that. So, here you are trying to get in
4 Mr. Silver's hearsay statement so what is the exception that
5 governs that would cover that? It is not going to be covered
6 as a business record of the Governor's office or the Attorney
7 General's office, whose ever press release this is.

8 MR. SHUR: Well, maybe I should talk about the
9 relevance because I think this is to respond to -- I believe it
10 was a new certification that the Attorney General's office came
11 out with that the government introduced relating to the grant
12 process where sponsors -- the member sponsoring the grant's
13 name is going to appear and this simply shows that Mr. Silver
14 was part of the process of implementing this new certification
15 along with the Attorney General's office and so that's the
16 relevance of it. If there is a concern about a particular
17 statement within the press release, that, we might be able to
18 redact that if that's the issue.

19 THE COURT: All of these things, sort of all of these
20 various members and the Governor and the Attorney General,
21 whoever all is quoted in here, it looks like everybody is
22 quoted in here, all of that is hearsay. I just don't -- why is
23 it admissible? Because they're all saying that they are great
24 patrons of transparency.

25 MR. SHUR: The issue is there were these mysterious

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1 facts that the government introduced from OHEL to Mr. Silver
2 where they said basically, FYI, here are these new forms and I
3 believe Mr. Mandel testified as to why did we send them over?
4 He said well, look. We work with members of the Assembly on
5 these grants and we got this new paperwork and so we figured we
6 should send it over to them. And there is this inference that
7 Mr. Silver is first learning about this form when he receives
8 it from OHEL and the fact is that he was part of the process of
9 rolling out these forms and this is what this exhibit shows.

10 MS. COHEN: Your Honor, there was an entire witness
11 who testified about these disclosure forms. One of the things
12 that he testified about was that Sheldon Silver was present at
13 the announcement of using these disclosure forms.

14 MR. SHUR: If you might remember, this is the witness
15 that said he left early and wasn't able to really testify about
16 what occurred at the press conference.

17 THE COURT: All right, but he said there was a press
18 conference and, as I recall, he testified that everybody was
19 there.

20 MS. COHEN: Correct.

21 THE COURT: He doesn't remember what anybody said.

22 MR. SHUR: He wasn't able to testify about what the
23 press conference was about.

24 MS. COHEN: You have testimony about it, this is
25 hearsay within hearsay.

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1 THE COURT: I don't see this one as being admissible.

2 MR. MOLO: On that, Judge, you are saying it is not
3 admissible?

4 THE COURT: Yes. I don't think 161 is admissible.

5 MR. MOLO: I just want to say rather than call
6 witnesses, someone to say that Mr. Silver was involved in
7 sponsoring this legislation and was a part of all of this --

8 THE COURT: This doesn't really say he sponsored the
9 legislation, I don't think. This was an agreement. It doesn't
10 even look like it is legislation.

11 MR. MOLO: All right, that he was part of this
12 initiative, all right. Rather than calling a witness to do
13 that this is one way to do it. I am looking here to avoid
14 lengthening the time for the Court and for the jury and for
15 everyone involved. Rather than subpoena somebody to testify to
16 that, this was a way to do it.

17 Now, I understand that the Court may be reluctant to
18 allow the press release in but I think the government could
19 stipulate to that fact, that Mr. Silver participated in this,
20 because through their own questioning there was a suggestion
21 that this was being done and Mr. Silver wasn't, you know --
22 someone was coming in to clean up this mess that he was part
23 of, helped create.

24 THE COURT: I thought the suggestion was kind of this
25 got pushed by I don't know whether it was the Attorney General,

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1 the Attorney General was pushing it? But there wasn't
2 testimony whether Mr. Silver came willingly to the party or
3 this was a shotgun wedding. This is making it seem like this
4 was he was a willing dance partner and I don't know if that's
5 true but there is no evidence, one way or the other to it. So,
6 from that perspective you have got a lot of hearsay from all of
7 these members which is inadmissible and you have got
8 Mr. Silver's, in particular, hearsay, that is not admissible.

9 So, to the extent you want to put on evidence that he
10 was a real proponent of this to rebut the government's
11 suggestion that this was a shotgun wedding, you are welcome to
12 do that, that's why you have a defense case, but this document
13 can't come in to do that. You can't short circuit it that way.
14 Okay?

15 230.

16 MR. SHUR: Judge, 230 is simply the attorney general's
17 sign-off on the grant.

18 THE COURT: On the grant. This is approval as to
19 form.

20 MR. SHUR: Right.

21 THE COURT: He didn't approve this as to legality.

22 MS. COHEN: Your Honor, this is already --

23 THE COURT: I thought this was in already.

24 MS. COHEN: This is in already as part of the contract
25 document.

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1 THE COURT: I thought you had this in. This is one of
2 many documents that you walked through, Mr. Molo, ad nauseam,
3 which included the AG's sign-off as to form.

4 MR. SHUR: For both grants? I thought it was for one
5 of the two.

6 MS. COHEN: It is in for both grants. What is not in
7 the contract obviously would be the cover letter to the state
8 comptroller from the AG's office.

9 THE COURT: This is from the AG to the comptroller?

10 MS. COHEN: Correct. I know the second and third
11 pages which is the grant contract with the stamp approved as to
12 form, it was in evidence and there was testimony about it.

13 MR. SHUR: Right, so what I believe is in evidence is
14 the stamp on the contract, right, that says the attorney
15 general has approved it but not the --

16 THE COURT: So what does this add?

17 MR. SHUR: It just completes the record, Judge, in
18 terms of the Attorney General's involvement in reviewing and
19 approving the grant.

20 THE COURT: Look. I think y'all are on very thin ice
21 on what you are arguing about what the Attorney General does.
22 The Attorney General, as whoever the witness was testified,
23 reviews as to legality. They are not reviewing whether it is a
24 good idea or a bad idea.

25 MR. SHUR: Judge, it is what it is in the letter what

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1 they've done and I think it is clear they reviewed as to form.
2 There is mention of the establishment clause. It is very
3 clear.

4 THE COURT: I don't see what this adds.

5 MR. SHUR: It is just completing the narrative --

6 THE COURT: What is the government's objection?

7 MS. COHEN: Your Honor, most of these pages of the
8 document are in evidence.

9 THE COURT: Okay, so what is your objection?

10 MS. COHEN: I don't understand what relevance the
11 cover letter is unless they're trying to make some argument
12 that there is no evidence in the record to support. And they
13 could have showed it to the attorney general witness again who
14 was on the witness stand when he was here.

15 MR. SHUR: Judge, I have to respond because Ms. Cohen
16 now has said a number of times they could have shown it to the
17 witness on the stand.

18 During this last witness' testimony Ms. Cohen handed
19 me a bunch of Goldberg & Iryami records with a summary chart
20 that clearly could have -- they could have shown Ms. Iryami
21 this. We just said, yes, you can introduce this, we have no
22 objection. So, the idea that the window has sort of passed for
23 that --

24 THE COURT: 230 is admissible. The government's
25 objection is overruled.

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1 What's next?

2 MS. COHEN: Your Honor, the next document that the
3 defense seeks in the pile they gave me to admit is Defense
4 Exhibit 164.

5 THE COURT: The next document that the defense wants
6 to --

7 MS. COHEN: I only say that because Mr. Molo said that
8 I was picking and choosing which documents I was showing you.

9 MR. MOLO: I didn't say that.

10 MS. COHEN: Defendant's Exhibit 164.

11 MR. MOLO: I didn't say that.

12 MS. COHEN: Defendant's Exhibit 164 and 165.

13 THE COURT: What possible relevance does 164 have? A
14 press release from the Shalom Task Force that Audrey Pheffer
15 champions the cause of domestic violence.

16 MR. SHUR: Judge, in the indictment, I understand that
17 the government has sort of, to some extent, abandoned this
18 during the course of trial but in the indictment what is
19 charged is that in exchange for referrals of asbestos cases
20 Mr. Silver directed state grant money to the Shalom Task Force
21 and I think what we have brought out during the course of the
22 trial is the fact that there were three other members of the
23 Assembly that asked Mr. Silver to give money to the Shalom Task
24 Force and he ended up matching what they were giving.

25 THE COURT: Which doesn't mean he wasn't influenced by

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1 other things.

2 MR. SHUR: I understand. But one of the members was
3 Audrey Pheffer that was leading the charge and wrote to
4 Mr. Silver asking to give money, that's who he is matching, and
5 this supports that, Judge. This is a business record of the
6 Shalom Task Force and talks about the fact that --

7 THE COURT: Nope. Nope. Nope. Nope. This is a
8 press release. Again, go back and read what a business record
9 is. This is a press release. It is not going to qualify as a
10 business record. It is prepared by well meaning communications
11 people to get a message out. So, 164 is out.

12 165? What is 165?

13 MR. SHUR: Judge, this is along the same lines in
14 terms of the Shalom Task Force grant and what the funds were
15 used for and who was involved in supporting the Shalom Task
16 Force.

17 THE COURT: Okay. That's not admissible.

18 Next document?

19 MS. COHEN: Your Honor, the next is a set of documents
20 marked for identification as Defense Exhibits 166 through 176,
21 243 and 244 for identification. I believe this is also the
22 last set of exhibits, your Honor.

23 THE COURT: Terrific.

24 Okay, let's start with 166.

25 MR. MOLO: 166 is a progress report that was prepared

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1 by Dr. Taub and it was prepared for 2001-2003, so it was
2 talking about the work that they were doing at this time.

3 THE COURT: This is before any of the grants, right?

4 MR. MOLO: This is before he had the grants but it is
5 showing the work that he was doing and I did put in evidence
6 concerning his early -- it was a little bit later, his CV, but
7 showing the work that he is doing, the work that he is doing
8 continues on. So, that's what this is.

9 THE COURT: I don't see the relevance of that.

10 MR. GOLDSTEIN: Judge, the one issue with this whole
11 series of documents, these are documents that were electronic
12 drafts that were on, I believe, Dr. Taub's computer that none
13 of which were finalized, as far as we know. The ones that were
14 actual final copies that appeared in the Assembly are all
15 admitted into evidence already.

16 THE COURT: In the Assembly, this is like a progress
17 report that looks like --

18 MR. GOLDSTEIN: Is that one sent to Mr. Milstein?

19 THE COURT: It is not clear. It is just a report of
20 progress, 2001 to 2003. It doesn't say who it went to or why
21 this was being prepared.

22 MR. GOLDSTEIN: So, our concern for this set of
23 documents is that without a witness to explain what they are
24 and since they are just drafts, that there is an ability for
25 them to be misleading to the jury and to be used for purposes

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1 that may not be proper.

2 THE COURT: Mr. Molo, I don't see the relevance of the
3 progress report. I don't see the relevance of 166. It is
4 outside the time period that is at issue.

5 MR. MOLO: All right.

6 THE COURT: So, 166 is out on relevance grounds.

7 167?

8 MR. MOLO: Which is 2006.

9 THE COURT: Dear Philip. Who is Philip?

10 MS. COHEN: It is to Philip Milstein, one of the
11 benefactors of the Mesothelioma Center.

12 THE COURT: Okay.

13 MR. MOLO: So, the relevance of this is that this is
14 in the relevant time period and it shows that as he is
15 reporting to Milstein he has left out any mention of work on
16 9/11-related -- that was the representation that he had made
17 when he was applying for the grants and in the grant contracts.

18 MS. COHEN: Your Honor, this is exactly the problem
19 that he didn't do this with the witness on the stand.

20 THE COURT: Okay, but so what? Why is that relevant?

21 MR. MOLO: Why? Are you asking me?

22 THE COURT: Yes.

23 MR. MOLO: Why is it relevant that he didn't do the
24 9/11 work? They've argued that the reason that he no longer
25 got any money from the state was that the "secret pot of money"

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1 was no longer secret. In fact, he wasn't doing the work that
2 he had contracted to do.

3 THE COURT: Well, that you needed to establish with
4 him on the stand. You can't do that through this document.

5 MR. MOLO: He testified that he wasn't doing -- he
6 testified as to the contrast.

7 THE COURT: Well, then you've got the testimony and it
8 is duplicative. Look. You could have --

9 MR. MOLO: It is duplicative for me. I mean --

10 THE COURT: You could have put this, used this when he
11 was on the stand so he could testify whether this was a
12 complete document, he could explain whether in fact this
13 information was sort of the same research that he is doing that
14 will assist 9/11 first responders and others who were exposed
15 to asbestos.

16 MR. MOLO: These are his documents.

17 THE COURT: Is it a final document?

18 MR. MOLO: You know what, it goes to --

19 THE COURT: He is not a party. He is a witness.

20 MR. MOLO: A very important witness and at least maybe
21 that goes -- it goes to the weight, perhaps, but not to the
22 admissibility or the minimal relevance of it.

23 THE COURT: But Mr. Molo --

24 MR. MOLO: This is a criminal trial where this man
25 testified, Taub testified about what he did, what he

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1 represented to the State, what he did later. He was all about
2 the computers. We saw all kinds of drafts that the government
3 had that they were showing from his computer.

4 THE COURT: And he identified whether they were a
5 draft or a final.

6 You are getting all exercised but with all due
7 respect, if this was an important document I don't understand
8 why you didn't show it to him when he was on the stand.

9 MR. MOLO: Do you want me to recall him now and have
10 him introduce it?

11 THE COURT: When did you get it?

12 MR. MOLO: When we got -- we want to get into when we
13 got this?

14 MS. COHEN: He got it in discovery in February.

15 MR. MOLO: We are going to get into a much longer
16 conversation if it is when we got it.

17 THE COURT: I can't let you put it in without a
18 witness on the stand, without him on the stand explaining what
19 it is because it is not obvious to me and so it is not going to
20 be obvious to a juror what this is and what this means.

21 MR. MOLO: Well, I think it is, Judge.

22 THE COURT: Okay. We are going to have to agree to
23 disagree.

24 MR. MOLO: No. What it is is a document of Dr. Taub's
25 reporting on his work at the time.

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1 THE COURT: Was it final? Is it a final document?

2 MR. MOLO: It is something he drafted at that time.

3 THE COURT: Is it a final document?

4 MR. MOLO: As to each of them? I'm not prepared to
5 tell you right this moment. All right? I don't want to say
6 something and be wrong.

7 THE COURT: Okay. Then, you know, this was kind of
8 your opportunity to be ready so I will put it in a different
9 pile.

10 MR. MOLO: Okay.

11 THE COURT: But the notion that you don't know the
12 answer is this is when we are going through the evidence that
13 the defense wants to present. So, 167, at the moment, it is
14 not in my reject pile but it is definitely not in the
15 admissible pile.

16 MR. MOLO: Why don't we defer this group, all right,
17 if that's all right?

18 THE COURT: So that's all of these.

19 MS. COHEN: I believe it is 167 through 173.

20 THE COURT: Okay. So that set, which will also allow
21 me -- through 170-what?

22 MS. COHEN: 173, your Honor. I have 167, 168, 169,
23 170, 171 --

24 THE COURT: 173 is a letter to Silver.

25 MS. COHEN: 172, 173.

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1 THE COURT: 173 is a letter to Silver.

2 MS. COHEN: The progress reports to other people and
3 things are 167 through 171.

4 THE COURT: What about 172? So, that set of documents
5 is on hold. Okay. Then we go to 172?

6 MS. COHEN: Correct, your Honor.

7 THE COURT: So we have 172, 173, 174, 175, this group.
8 Okay, this letter, Mr. Molo --

9 MR. MOLO: I'm sorry.

10 THE COURT: Do you need to consult with Ms. Le?

11 MR. MOLO: Yes, I was.

12 THE COURT: I'm happy to let you consult. The next
13 document that I have in my hand -- oh, you do need to consult.

14 (Counsel conferring)

15 MR. COHEN: Your Honor, while we are waiting for them,
16 Ms. Cohen was going to decide whether she had a problem with
17 the resolutions.

18 MS. COHEN: What?

19 MR. COHEN: The resolutions and the proclamation.

20 MS. COHEN: Talking about the big, looseleaf door
21 stop?

22 MR. COHEN: Correct.

23 MS. COHEN: Your Honor, we have no objection to it
24 going in. I don't see that it is relevant but I don't feel
25 like arguing over it.

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1 MR. COHEN: Also, Mr. Master and I were going to agree
2 to a document that I showed to the FBI agent this afternoon.

3 Mr. Master?

4 MR. MASTER: I haven't had the chance to do the
5 calculations.

6 MR. COHEN: It sounds like tonight is our night.

7 THE COURT: So that's -- 91 is all the resolutions?

8 MS. COHEN: I just want to make sure we are talking
9 about the right thing.

10 MR. COHEN: The book.

11 MS. COHEN: The book with all the resolutions for all
12 the different Assembly people at their request.

13 MR. COHEN: Correct.

14 MS. COHEN: I don't have it with me, your Honor, so I
15 don't know the number.

16 THE COURT: This is it; lots and lots of Assembly
17 resolutions honoring all kinds of people for all kinds of
18 things.

19 MR. COHEN: Right. Okay. She's not objecting.

20 THE COURT: Okay. So 91 can come in.

21 MR. COHEN: Excuse me. And Mr. Master and I have to
22 agree but I think we can resolve that tomorrow, Mr. Master?

23 THE COURT: You will have to resolve it tomorrow
24 before the charge conference.

25 MR. COHEN: We will do it, correct, Mr. Master?

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1 MR. MASTER: Yes.

2 THE COURT: Okay.

3 All right, Mr. Molo?

4 MR. MOLO: I withdraw 173. 174.

5 THE COURT: Wait a minute, I was on 172.

6 MR. MOLO: Oh.

7 MS. COHEN: But 173 is withdrawn.

8 MR. MOLO: 172 is a document that was retrieved from
9 Dr. Taub's computer and it is a business record prepared by
10 him.

11 THE COURT: Hang on a second. It is not a business
12 record. Wasn't this document finalized and put into evidence
13 in the final version that actually went to Mr. Silver?

14 MR. GOLDSTEIN: Actually, the March 29th one, the only
15 record is electronic, it is in as Defense 20 without the
16 metadata.

17 THE COURT: So this is already in evidence.

18 MR. GOLDSTEIN: Already in evidence. If the defense
19 wants to put in the metadata on the front page as an amended
20 exhibit, that's fine.

21 MR. MOLO: That's fine. We will do that.

22 THE COURT: Okay. So this is actually amended, what
23 is it, Defendant's Exhibit what, Mr. Goldstein? It is amended
24 Defense Exhibit what?

25 MR. GOLDSTEIN: Defense Exhibit 20.

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1 THE COURT: Okay, fine.

2 174, this is the October '07 letter. Isn't this
3 already in evidence?

4 MR. GOLDSTEIN: The final version of this and I
5 believe the next one are both in evidence.

6 THE COURT: Okay, so why --

7 MR. MOLO: The metadata.

8 THE COURT: Why is the metadata for the draft, why is
9 that relevant? You have the final in.

10 MR. MOLO: We will do it without the metadata.

11 THE COURT: So you don't need the draft, right? You
12 are withdrawing 174?

13 MR. MOLO: One second.

14 (Counsel conferring)

15 MR. MOLO: We will go without the draft.

16 THE COURT: The final is already in evidence.

17 MR. MOLO: All right.

18 THE COURT: Okay, so you are withdrawing 174?

19 MR. MOLO: I will withdraw 173 and 174.

20 THE COURT: 175.

21 MS. COHEN: What is being withdrawn?

22 THE COURT: 173 and 174.

23 MS. COHEN: And 172 is withdrawn or in?

24 THE COURT: 172 is going in as amended Defendant 20,
25 so the metadata on front goes in.

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1 175, Mr. Molo. Let's go, guys. I want to get this
2 done.

3 MS. COHEN: I will give him my copy, your Honor.

4 Mr. Molo, here is your Defense Exhibit 175.

5 MR. MOLO: This is an e-mail from Joy Wheeler to
6 Dr. Taub regarding the visit of -- to Mr. Silver and it is sent
7 to set up the meeting that was testified to.

8 THE COURT: I'm sorry. Okay. It's a Wheeler to Taub
9 e-mail?

10 MR. SHUR: Right.

11 THE COURT: Saying that there is an appointment with
12 the Assemblyman. So, why is this relevant?

13 MR. MOLO: Well, because they have this meeting. I
14 mean it is an e-mail --

15 THE COURT: Yeah, yeah, yeah, but there is evidence of
16 that, right? You introduced evidence of that.

17 MR. MOLO: We sat and listened and saw telephone
18 records, there was evidence of telephone calls today, we spent
19 two hours --

20 THE COURT: Why is this relevant? I understand why
21 that was relevant, moreover there was no objection, but why is
22 this relevant?

23 MR. MOLO: She is writing Dr. Taub setting up the
24 meeting saying that Kirkland, the firm's COO, is going to be
25 there and we wanted to --

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1 THE COURT: Why is it relevant? What does it prove
2 that is relevant?

3 MR. MOLO: To show that they were setting up a
4 meeting, that Wheeler and Taub are setting up this meeting.

5 THE COURT: What is the objection?

6 MS. COHEN: No objection, your Honor.

7 THE COURT: Okay, 175 is in.

8 176.

9 MR. MOLO: Before I go through the argument, is there
10 any objection?

11 MR. GOLDSTEIN: We need to pull it up.

12 MR. MOLO: I thought we were just going through the
13 documents that the government was objecting to.

14 THE COURT: I did too.

15 MS. COHEN: I did, your Honor. I didn't feel like
16 arguing for 20 minutes to have you overrule and let it in.

17 THE COURT: That's what I thought.

18 MS. COHEN: Your Honor, in order conclude this part of
19 the proceeding the government has no objection to Government
20 Exhibit 176.

21 THE COURT: Defendant's Exhibit 176?

22 MS. COHEN: Yes, sorry.

23 THE COURT: Defendant's Exhibit 176 is in.

24 (Continued on next page)

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1 THE COURT: 243.

2 MR. MOLO: Is there an objection?

3 MS. COHEN: Your Honor, could I inquire if there are
4 some subsets that they have an objection to, so we could just
5 address those. This is the last defense exhibit unless there
6 are others that you didn't give to me.

7 Are there others?

8 THE COURT: 243.

9 Does the government object to 243?

10 MS. COHEN: Your Honor, I don't really understand why
11 this is relevant. Plus, there would have to be numerous
12 redactions because there is all of these employees' information
13 at Columbia, Social Security numbers.

14 I don't really understand why this is relevant given
15 all the other evidence on this, and it's cumulative.

16 THE COURT: You all put in a lot of documents today
17 that had bank account numbers on them.

18 Are those accounts all closed?

19 MR. GOLDSTEIN: They're all subject to the forfeiture
20 order in the case.

21 MS. COHEN: It's public.

22 THE COURT: So you're not worried about them?

23 MR. GOLDSTEIN: We're not worried about those.

24 THE COURT: Mr. Molo, why is this relevant?

25 MR. MOLO: Because, again, this establishes the bona

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1 fides of these grants.

2 THE COURT: There's no question that these grants
3 aren't real grants. No one is suggesting otherwise.

4 MR. MOLO: I'm entitled to show the jury that, and
5 that's what I'm asking to do with this. It's one thing to say
6 that to them. It's another thing to show them that there were
7 actual budgets prepared. If there's some kind of sensitive
8 information in here, we're happy to redact that.

9 But as to the --

10 THE COURT: You've got third parties' names and salary
11 numbers.

12 MR. MOLO: That comes into evidence all the time in
13 all sorts of cases.

14 THE COURT: Usually they've done something wrong when
15 that happens.

16 MR. MOLO: If there's something that the government
17 wants us to redact, we'll be happy to look at it and see if it
18 matters. With respect to what this shows, it shows, again, the
19 bona fides of this grant.

20 By the way, we're not talking about reams of documents
21 here. These are a handful of documents.

22 THE COURT: That's not helpful to the argument.

23 Does the government withdraw their objection to this
24 document?

25 MS. COHEN: No, your Honor. The redactions, yes.

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1 They agreed to do the redactions of the names and of the
2 Social Security numbers. I don't see how entering how much
3 each employee got paid -- maybe part of the document is
4 relevant and the other part is just not.

5 THE COURT: Do you want -- is what you're really
6 interested in the cover memo?

7 MR. MOLO: I'm sorry?

8 THE COURT: Is what you're really interested in the
9 cover memo?

10 MR. MOLO: I do think that the attachment kind of lays
11 it out in somewhat of an official way. But at least the cover
12 memo and maybe the first page that follows it. The cover memo
13 and the first page that follow it really kind of show it to
14 be --

15 MS. COHEN: I think actually this budget is actually
16 in some of the grant contracts already. So it's cumulative.
17 If it's only the first two pages, the government has no
18 objection to the first two pages of Defendant's 243.

19 THE COURT: So 243 redacted down to the cover memo and
20 the first page will come in.

21 The next document is 244.

22 MR. MOLO: I think that was the last one they said
23 they had an objection to.

24 THE COURT: No. Is there an objection to 244? This
25 is more OSHA.

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1 MS. COHEN: I have to see it. I'm sorry.

2 MR. MOLO: What this is is the OSHA -- it's there on
3 the screen too. The OSHA issue arose in the first grant, and
4 it was resolved. This is an email following up on that for the
5 second grant.

6 THE COURT: We're not talking about the second -- this
7 is a letter or a memo from Columbia to the general counsel to
8 the New York State Department of Labor. There's nothing on its
9 face that makes it relevant.

10 MR. MOLO: Yes. It shows that in 2007 there is this
11 additional back-and-forth between Columbia and the Department
12 of Labor on the second grant, which demonstrates again just
13 more activity that these are not send in the coupon and get
14 your grant. That's all it shows. That's all we're going to
15 argue it shows.

16 MS. COHEN: Your Honor, there's nothing on this that
17 says it's in any way related to the grant, to either grant.

18 THE COURT: I don't know how it attaches up.

19 MR. SHUR: Judge, I apologize. It doesn't seem like
20 it's clear from the exhibit, but this was actually in response
21 to a request to the comptroller's office. This is part of the
22 comptroller's file in connection with the grant.

23 So, when they flagged that there was an OSHA violation
24 at Columbia, Columbia responded to say, no. It's been
25 resolved. It's been wrapped up. This is how it's been

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1 resolved. There was a fine, and we paid it, etc. And then the
2 process moved forward.

3 I believe there was a stipulation that went along with
4 it saying that it was a business record of the comptroller's
5 files.

6 THE COURT: That may be, but the question is how do
7 you link this to that grant?

8 MR. SHUR: It's part of the file.

9 THE COURT: Okay. I can't decide that based on what
10 you're telling me.

11 Have you shown the government how you connect this
12 memo?

13 MR. SHUR: We're happy to do that.

14 THE COURT: You have to do it before the charge
15 conference, or I'm not going to let it in.

16 MR. SHUR: Understood.

17 THE COURT: Any other documents? So, according to my
18 recordkeeping system, the following defense exhibits will be
19 admitted:

20 Defense Exhibit 243, only the first and second page of
21 that.

22 Defense Exhibit 176, 175, 172, which is going to
23 become the amended Defense 20, Defense Exhibit 230, Defense
24 Exhibit 163, a stipulation, and 245.

25 MS. COHEN: Your Honor, the stipulations are not

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1 necessary. Only the documents.

2 THE COURT: Do you need the stip?

3 MS. COHEN: We're not intending that they're not
4 authentic documents.

5 THE COURT: So it's just authenticity and where they
6 were found. But this seems obvious that it comes from
7 Presbyterian's files. Okay?

8 MR. SHUR: That's judge, fine. Yes.

9 THE COURT: So just 245 then. 162-1, 162-2, 231, 232,
10 233, 234, 235, 179, and that's it.

11 The ones that are on hold are 244 --

12 (Pause)

13 MR. SHUR: Judge, I think there were some stipulations
14 that we provided to the government, and they indicated that
15 they're duplicative and that those documents are already in
16 evidence.

17 If we could just over this evening confirm that.
18 We'll get in touch with the government if there's some
19 confusion if there's any issue there.

20 THE COURT: Okay.

21 MS. COHEN: If I can just be clear so that this
22 doesn't become expanded over the evening. I think it was just
23 Defense Exhibit 134, which I believe was already in evidence.
24 And then there was one other document that is a subset of a
25 state contract that's already in evidence.

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1 THE COURT: So there are two documents that are up in
2 the air that I don't know about yet.

3 MS. COHEN: If you could check your sheet on Defense
4 Exhibit 134. We have it as admitted.

5 THE COURT: Defense 134 is in evidence.

6 MS. COHEN: Your Honor, apparently there's a whole
7 other set of documents. I'm happy to go through them now or
8 not.

9 MR. SHUR: Judge, this is a stipulation that was sent
10 to the government last night. There is some miscommunication
11 in that some of the documents mentioned in the stipulation were
12 documents that were moved in conditionally through Mr. Runes
13 and Mr. Meara regarding the legislative history.

14 THE COURT: Yes.

15 MR. SHUR: There are some additional documents in that
16 same stipulation that were not conditionally moved in. I just
17 explained that to the assistant. We'll resolve these issues
18 overnight, Judge.

19 THE COURT: We'll deal with those tomorrow.

20 MS. COHEN: Just to be clear, the defendant's stip
21 that he's referring to is S-13. So whatever documents that are
22 named in here, we will take up.

23 THE COURT: So there are all those conditional --
24 there were a bunch of documents that were conditionally
25 received.

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1 MS. COHEN: Correct. I put on the record that we
2 withdraw our conditional objection.

3 THE COURT: To all of those?

4 MS. COHEN: I think there were only about five or six
5 of them.

6 THE COURT: There were. I don't think I understood
7 that you were withdrawing it to everything.

8 MS. COHEN: We were, your Honor.

9 THE COURT: So we'll need to put that on the record.
10 The ones I have on hold are 167, 168, 169, 170, and 171, and
11 244 that the defense needs to come back with more information
12 regarding these documents. That's due tomorrow before the
13 charging conference.

14 Any other documents, evidence-type things we need to
15 work out?

16 MR. SHUR: No, Judge.

17 THE COURT: No. Okay.

18 Mr. Silver -- Mr. Molo, is Mr. Silver going to
19 testify?

20 MR. MOLO: Mr. Silver is not going to testify.

21 THE COURT: Mr. Silver, do you understand that you
22 have a constitutional right to testify, and you have a
23 constitutional right not to testify?

24 THE DEFENDANT: Yes.

25 THE COURT: If you don't testify, I'm going to charge

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1 the jury they can't hold that against you.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Then I will give them that charge.

5 THE DEFENDANT: I understand that.

6 THE COURT: At the end of the day, whether to testify
7 or not is your decision. You should listen to your lawyers.
8 They'll give you good advice on it. But, at the end of the
9 day, it has to be your decision whether to testify or not.

10 Do you understand that?

11 THE DEFENDANT: Yes. I understand.

12 THE COURT: Do you wish to testify?

13 THE DEFENDANT: I do not wish to testify.

14 THE COURT: Okay. Thank you.

15 Here is my plan for tomorrow: There are still an
16 unusually large number of dribs and drabs that need to be
17 cleaned up. I would like to do that at 3:00 tomorrow
18 followed -- actually, I would like to start with the charge
19 conference.

20 Can you be here by 3:00?

21 MR. MOLO: I'm set to start at 9:30. I'm going to go
22 straight from the Court of appeals to the train station.

23 THE COURT: So we are going to be set for 3:00.

24 MR. MOLO: Okay.

25 THE COURT: If, when you walk out of the Third

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1 Circuit, you know that you're not going to be able to make it
2 at 3:00, you must call my chambers.

3 MR. MOLO: I will.

4 THE COURT: And you must call Ms. Cohen.

5 MR. MOLO: Okay.

6 THE COURT: And you're going to tell us what train
7 you're going to be on so we will know what time you will be
8 here.

9 MR. MOLO: Okay.

10 THE COURT: We will then readjust the charge
11 conference.

12 MR. MOLO: Okay. Thank you.

13 THE COURT: That's the plan.

14 MR. MOLO: I appreciate that.

15 THE COURT: After the charge conference, we'll deal
16 with this little batch of documents, and we'll deal with this
17 last stipulation that also has documents associated with them.

18 That will be it.

19 MR. MOLO: We have a motion as well, your Honor.

20 THE COURT: You have a motion.

21 MR. MOLO: Right.

22 THE COURT: We'll argue that tomorrow. I don't want
23 to hear it tonight. I'm tired. You're tired. We'll hear it
24 tomorrow.

25 MR. MOLO: Okay.

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1 MS. COHEN: There's one other housekeeping thing. We
2 had given the defense prosecute proposed transcript changes,
3 which they said they would look at.

4 Have you had a chance to look at them?

5 MR. MOLO: The transcripts are not going back to the
6 jury; right?

7 THE COURT: Typically, they are sent back. The
8 government typically takes the responsibility of cleaning them
9 up and getting rid of the sidebars and the like off of your
10 version so that they can go back.

11 Do the parties have a position on this? I'll do it
12 either way. It imposes work on the government.

13 MS. COHEN: Your Honor, I prefer that the
14 transcripts -- if they want to have readback, they come into
15 court, and we have readbacks in court.

16 MR. MOLO: Yes, your Honor. Trial transcripts I would
17 not have go back. No.

18 THE COURT: Let me make it very clear that many judges
19 in this district, including this one, have done it. So it's
20 not like it's I don't have two heads on this.

21 MR. MOLO: We agree with the government. If they want
22 a readback, they should come back to the Court, and we'll have
23 a readback.

24 THE COURT: So we'll fix the charge accordingly.

25 If there are corrections that need to be made to the

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1 transcripts, that still needs to be cleaned up. If you can
2 agree, that's great. If not, at the end of the day, it's my
3 responsibility.

4 MR. SHUR: There's just one issue apparently, and
5 we'll resolve it with the government this evening.

6 THE COURT: A transcript issue?

7 MR. SHUR: Right. Correct.

8 THE COURT: Okay.

9 Anything else? So the final sort of housekeeping
10 matter is I am going to do the summations down in 110. So
11 we'll start in 110. You'll move in the rest of these exhibits
12 down there.

13 Then, as I say, we'll roll into summations from there.
14 The jury is going to start up here, and we'll bring them
15 downstairs once they're all gathered because their swipe cards
16 don't work downstairs.

17 MR. MOLO: Okay.

18 THE COURT: So I will see you all at 3:00 tomorrow
19 unless we both get calls from you, Mr. Molo, that says you're
20 delayed.

21 MR. MOLO: Thank you, your Honor.

22 MS. COHEN: Thank you, your Honor.

23 (Adjourned to November 19, 2015, at 3:00 p.m.)
24
25

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1A2306
9522324
9502326
9512328
953 and 9542330
1012-12332
955 and 9562333
961 and 9622335
9652337
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1	1203, 1204, 12052472
2	1206, 1207, 12082472
3	1209, 1210, 12222472
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18	Exhibit No.	Received
19	1792566

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